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Legislative Regulation and Control of Intoxicating Liquors

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QUESTIONS relating to the traffic in intoxicating liquors have for generations been the subject of much discussion among students of sociology and have from an early date invited the attention of law-making bodies in the English-speaking countries. Although the traffic is not, at common law, wrongful in itself or a nuisance *per se*, yet it has as a general rule been regarded with disfavor. Early in English history we find the assertion of a certain power of regulation though not to as broad an extent as is now recognized. As long ago as the date of the Magna Charta certain rights in respect to the control of the sale of ale and wine were claimed by the framers of that instrument, in which it was asserted that there should "be one measure of wine throughout all our kingdom and one measure of ale." Following this, various acts were passed in subsequent reigns in England, tending to a regulation of the traffic. In the early part of the eighteenth century laws for the purpose of curbing the sale of gin were enacted as a result of what the historian Smollett describes as a "shameful degree of profligacy" among the populace of London, in which city the retailers of gin "set up painted boards in public, inviting people to be drunk for the small expense of one penny; assuring them they might be dead drunk for two pence, and have straw for nothing" and "provided cellars and places strewed with straw" to which the intoxicated persons were conveyed. In the American colonies as early as 1733 we find in Georgia a recognition of the evils of the traffic in a letter from the "trustees for establishing the colony of Georgia in America" to James Oglethorpe, the leader of the colonists, in which it was said that sickness among the people was "owing to the excessive drinking of rum punch." Further drinking of rum was at that time forbidden, and shortly after the further importation of rum and brandy into Georgia was prohibited by an act of Parliament. In Maryland also nearly a century prior to this it was provided that the sale of liquors to Indians in excess of a certain

amount should be punished by a fine. Likewise in several of the colonies it was an offense to drink in public houses on certain days or after specified hours.[1]

In various other ways the early colonists recognized the demoralizing effects of this traffic, if unrestrained and asserted the right to control it. Probably the most prominent among the early legislation were acts requiring a license. This was true both in England and America. It will thus be seen that regulation is not of recent origin, but may be traced back several hundred years to the days when the English speaking people were beginning to assert their rights against the encroachments upon their liberties by royalty. As time passed this right to regulate and control was continually asserted in the form of a moderate license fee and liberal regulations, on the one hand, to those acts prohibitive of either sale or manufacture, on the other. Though the right of the legislature to pass many of the severer measures has been vigorously assailed, yet the courts have generally sustained laws of this character, it being declared that the right to sell liquor is not an inherent one, but is rather in the nature of a privilege, subject to regulation by the state in the exercise of that broad power, so difficult to define, designated the police power, and which it is said may be exercised "solely at the legislative will."[2] This power which is inherent in every sovereignty authorizes legislation in matters affecting the public health, peace, and morals. All rights as to individual conduct and ownership of property exist subject to it.[3]

"The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community."[4] In brief, the nature and authority of the police power may be best described by the maxim, *Solus populi suprema lex.*[5]

In consequence of this inherent plenary power, it can readily be seen that the business of manufacturing or selling intoxicating liquors furnishes a broad field for its exercise. One does not need to be even a moderate student of the liquor question to know that many results demoralizing to the home and pernicious to society may be traced to this source, even under laws somewhat strict in their nature. Consequently it seems eminently fitting and proper that legislative bodies should exercise powers of regulation and control over the traffic. Nor do the courts seem inclined to restrict the authority of legislatures in this respect, in the absence of some controlling constitutional limitation.[6]

Laws of this character have been uniformly sustained as being a legitimate exercise of the power inherent in the state, and which may be asserted in such form and manner as the legislature may, in its discretion, deem advisable. Nor is the right of the state to enact laws of this character affected or in any way limited by the fact that residents therein may be granted licenses by the Federal government, since the citizens of a state must look to the laws of the jurisdiction within which they reside for authority to conduct the traffic, the Federal license conferring no rights, in the absence of a compliance with the state laws.[7]

Each state stands as an independent sovereignty in this respect, possessing full power to regulate and prescribe the rights and duties of its citizens to each other and to the state, and so long as its acts are a legitimate exercise of the police power, the Federal government cannot license or authorize its citizens to violate the laws so enacted.

The general power of legislation must, however, be exercised within the limits of the power existent by virtue of the inherent right to protect the public health, morals, peace, and safety. It

[1] Cyclopedia of Temperance, pp. 275 et seq.
[2] Paulsen v. Portland, 149 U. S. 30, 40, 37 L. ed .637, 641, 13 Sup. Ct. Rep. 750, per Mr. Justice Brewer.
[3] Munn v. Illinois, 94 U. S. 113, 24 L. ed. 77.
[4] Crowley v. Christensen, 137 U. S. 86, 89, 34 L. ed. 620, 622, 11 Sup. Ct. Rep. 13, per Mr. Justice Field.
[5] State ex rel. George v. Aiken, 42 S. C. 222, 20 S. E. 221, 26 L.R.A. 345.
[6] Campbell v. Jackman Bros. 140 Iowa, 475, 118 N. W. 755, 27 L.R.A.(N.S.) 288.
[7] License Tax Cases, 5 Wall. 462, 18 L. ed. 497.

does not extend beyond that, so as to authorize legislative action which interferes with individual rights not affecting the public at large. An instance of this is held to arise in the case of enactments forbidding a person to keep liquor in his possession, for his own individual use where it is without injury to the public. In such case the legislation is regarded as an abridgment of the privileges and immunities of the citizen, which is in violation of his constitutional rights. If the keeping of an article be injurious to the lives, health, morals, or comfort of the public, then the exercise of the power is well justified. Where, however, this result does not arise, then no occasion for legislative action can exist.[8]

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Generally, however, the courts seem to have recognized but few limitations upon the right to legislate in reference to this traffic. It is essential, of course, that the legislation must be constitutional; but rarely has it, when exercised by virtue of the police power, been held to be otherwise. Many and varied have been the measures passed. Frequently the right of the state to engage in the traffic, as by means of dispensaries, has been recognized, and to such acts the doctrine of monopoly has been held not to apply. It is said that it would be an anomaly in the law to hold that the principal could delegate to an agent a greater power than the principal himself could exercise.[9] In other words that which the state may by license authorize one of its citizens to do, it may do itself.

Passing over with a brief mention other measures of inestimable value when properly enforced, such as those excluding the traffic within certain distances of educational and religious institutions, requiring consent of owners of near-by property, prohibiting sales to minors or the employment of minors and females, closing of saloons on Sunday or requiring the closing, between certain hours, of places where liquor is sold, all of which, with numerous others, are a valid exercise of the police power, we find that there are four classes of laws which stand forth with particular prominence; *viz.*, those as to local option, conferring the right to bring an action for damages against the seller, licensing the traffic, and prohibiting it. The constitutionality of acts within these classes has always been vigorously assailed, but has been uniformly sustained by the courts; the doctrine now being established, after some hesitancy, that prohibitory acts are valid even though property used in the production or sale of intoxicating liquors be diminished in value or rendered practically useless.[10]

With this slight reference to license and prohibitory laws, we will refer more particularly to those relating to local op-

[8] State v. Gilman, 33 W. Va. 146, 10 S. E. 283, 6 L.R.A. 847.

[9] State ex rel. George v. Aiken, 42 S. C. 222, 20 S. E. 221, 26 L.R.A. 345.

[10] Mugler v. Kansas, 123 U. S. 623, 31 L. ed. 205, 8 Sup. Ct. Rep. 273.

tion and actions for damages resulting from the sale.

By local option is meant, in substance, the right of minor political subdivisions of a state to determine for themselves whether the liquor traffic may be carried on within their limits. As in other cases of legislative action in reference thereto, so we find here that, though laws of this character have been the subject of vigorous attack on the ground of their unconstitutionality, yet they have generally been upheld, it being declared that every reasonable intendment is to be resolved in favor of the constitutionality of such a law. To justify a determination that it is invalid, the invalidity must be established beyond a reasonable doubt.[11]

The objection most frequently raised against these acts is that they operate as a delegation of legislative power. This objection has not, however, met with any favorable consideration from the courts, since it is the action of the legislature which gives the measure the effect of a law. The vote of the citizens in respect to its adoption is not to be regarded as a legislative act, but simply a determination as to the acceptance of the provisions of that which is already a law. It is the contingency upon which the enactment takes effect.[12]

Nor are laws to this effect within the inhibition of the constitutional provision as to special, local, or class legislation. Where the act is general in its operation throughout a state, no one subdivision having either greater or less power than another, it is not rendered unconstitutional by the fact that one or more political subdivisions adopt its provisions while others do not.

One other class of legislation to which reference will be made is that conferring a right of action for damages against the seller of intoxicating liquor. Laws of this character are known by the general designation of civil damage acts, and their constitutionality has generally been sustained.[13]

Such a right did not exist at common law, but is purely a creature of legislation [14] and statutes creating this right are to be strictly construed.[15] They will not be extended by implication, so as to cover a case where liquor is given to a person.[16] To have this effect the act must so provide.[17]

If notice not to sell is required, then it is essential that it should be given,[18] and by the person designated.[19] Where the class of persons is specified to whom the sale must have been made in order to confer the right, no action will lie except for a sale to a person coming within one of those classes.[20] In other words, to sustain a right of action under such a statute the case must in all respects be brought within the terms of the enactment.[21]

It is also generally held that the intoxication which was caused or contributed to by the sale must have been the proximate cause of the injury complained of.[22] It would seem, however, that there would be many cases in which a recovery should be allowed, and in fact it has been, where it would be difficult, if not impossible, to establish the fact that the intoxication was the proximate cause of the injury. Such a view was taken where the statute gave a right of action to one injured "in person or property or in means of support by any intoxicated person, or in consequence of the intoxication, habitual or otherwise,

[11] Re O'Brien, 29 Mont. 546, 75 Pac. 200, 1 Ann. Cas. 373.

[12] Territory ex rel. McMahon v. O'Connor, 5 Dak. 397, 41 N. W. 746, 3 L.R.A. 355; State, Paul, Prosecutor, v. Circuit Judge, 50 N. J. L. 585, 15 Atl. 272, 1 L.R.A. 86 note.

[13] Horning v. Wendell, 57 Ind. 171; Moran v. Goodwin, 130 Mass. 158, 39 Am. Rep. 443; Bertholf v. O'Reilly, 74 N. Y. 509, 30 Am. Rep. 323.

[14] Cruse v. Aden, 127 Ill. 231, 20 N. E. 73, 3 L.R.A. 327; Bacon v. Jacobs, 63 Hun, 51, 17 N. Y. Supp. 323.

[15] Schulte v. Schleeper, 210 Ill. 357, 71 N. E. 325.

[16] Brannan v. Adams, 76 Ill. 331.

[17] Welch v. Jugenheimer, 56 Iowa, 11, 41 Am. Rep. 77, 8 N. W. 673.

[18] Peqram v. Stortz, 31 W. Va. 220, 6 S. E. 485.

[19] Engle v. State, 97 Ind. 122.

[20] Myers v. Conway, 55 Iowa, 166, 7 N. W. 481.

[21] Paulson v. Langness, 16 S. D. 471, 93 N. W. 655.

[22] Schulte v. Schleeper, 210 Ill. 357, 71 N. E. 325; Roach v. Kelly, 194 Pa. 24, 75 Am. St. Rep. 685, 44 Atl. 1090.

of any person;" and an action was brought by the wife for the wrongful sale of liquor to her husband, who committed suicide while intoxicated. In this case the court held that the wife could not be required to show that he would not have taken his own life had not the defendants sold him the liquor which produced the intoxication, saying that to require this would leave the statute shorn of effective force and vitality.[23]

There is also some conflict upon the question of liability where a person while intoxicated because engaged in an altercation and is injured or killed, there being some cases which hold that under such a state of facts the seller is not liable,[24] while in others the contrary rule prevails.[25] In the former class of cases it is said that the intoxication is not the proximate cause of the injury sustained. This is probably due, however, in most cases to considering proximate cause as being the cause nearest in point of time, rather than as an efficient or primary cause which may be connected by a continuous chain of events with the result produced. Where intoxication causes loss of the control of the mental faculties, resulting in an altercation and injury, it seems rather of an anomaly to hold that it is not the proximate cause of the injury while, where it causes loss of control of physical powers, and injury ensues, it is held that it is.

[23] Bistline v. Ney Bros. 134 Iowa, 172, 111 N. W. 422, 13 Ann. Cas. 196, 13 L.R.A.(N.S.) 1158 note.

[24] Sauter v. Anderson, 112 Ill. App. 580; Shugart v. Egan, 83 Ill. 56, 25 Am. Rep. 359.

[25] Currier v. McKee, 99 Me. 364, 59 Atl. 442, 3 Ann. Cas. 57; Woodring ex rel. Woodring v. Jacobino, 54 Wash. 504, 103 Pac. 809.

[26] Jockers v. Borgman, 29 Kan. 109, 44 Am. Rep. 625; Rosecrantz v. Shoemaker, 60 Mich. 4, 26 N. W. 794.

The amount of damages recoverable under these acts is ordinarily based on those actually sustained. In many cases, however, they authorize a recovery of exemplary damages in addition thereto. Frequently, also, independent of statute, the recovery of such damages has been allowed where the act of the seller has been wanton, reckless, or malicious. And, in general, this state of facts must be shown to authorize a recovery of such damages.[26]

Laws conferring this right of action have generally been regarded with much favor. Though their primary purpose is to provide a remedy for the wife and family who have been injured by the sale of intoxicating liquor to the husband, yet, as a general rule, their scope is much broader, in that a remedy is provided not only to the family, but also to other persons who have been injured by the same cause. They are regarded as a wise exercise of the legislative power.

With this brief discussion of the power of the law-making bodies to pass acts in control and regulation of the traffic, it will be seen that there is but little limitation upon the extent to which they may legislate. From the border land, on the one hand, of no license, to the prohibitory act, on the other, there is a wide range, and yet any measure, from the one extreme to the other, has been regarded as valid, subject, of course, to certain constitutional provisions applicable to all measures passed in the exercise of the police power.

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Interstate Commerce in Liquors

Has Congress power to "outlaw" intoxicating liquors by devesting them of their character as legitimate subjects of interstate commerce?

BY THOMAS LEE WOOLWINE

of the Los Angeles Bar

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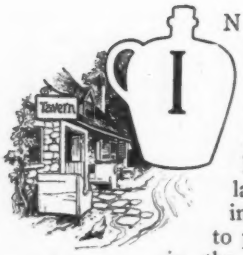


IN March of the present year the Congress of the United States passed, over the veto of President Taft, a law designed and intended as an aid to prohibition states in the enforcement of the laws of such states against the sale of intoxicating liquors, by devesting such liquors, in case of transportation into such states, of all the immunities and privileges heretofore given to such commodities as legitimate articles of interstate commerce. The measure referred to is known as the Webb act and reads as follows:

"An act devesting intoxicating liquors of their interstate character in certain cases.

"Be it enacted, etc., That the shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one state, territory, or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other state, territory, or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any state, territory, or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such state, territory, or district of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited."

Has Congress exceeded its authority?

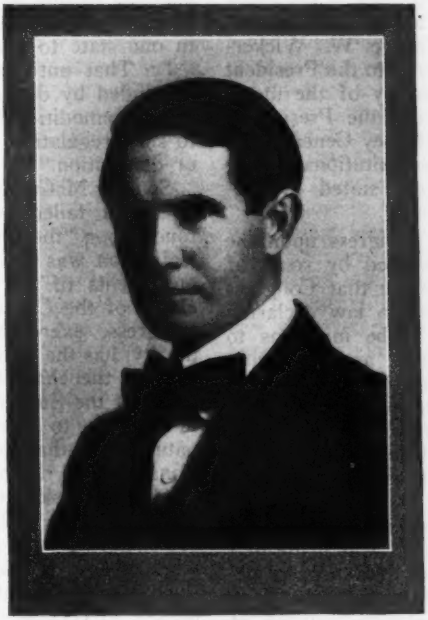
Has Congress the power to hand over to the government of the respective states the right to declare how and when and under what conditions the interstate commerce in intoxicating liquors shall be allowed, and thus to outlaw and abandon a commodity heretofore repeatedly held by the Supreme Court of the United States to be a legitimate article of interstate commerce, and therefore under the exclusive control, jurisdiction, and protection of the Federal government?

If Congress has such right, has it by the present enactment placed these commodities in the same category with adulterated food, diseased cattle, obscene literature, lottery tickets, and women for immoral purposes, and thus, by implication, declared intoxicating liquors to be injurious to health and good morals, and to be outlaws of interstate commerce?

This bill prohibits the shipment of intoxicating liquors into so-called "dry" states, thus stripping these commodities of the last vestige of their character as legitimate articles of interstate commerce, so far as shipment into such states is concerned. They can no longer cross the state border into so-called "dry" territory under the protection of the interstate commerce provision of the Constitution; the right of the consignee to receive the original package from

across the state line without interference from the state authorities is at an end if the Webb act passes the gauntlet of the various courts up to and through the Supreme Court of the United States.

The Webb act prescribes no penalty. Under its provisions no one can be punished by the Federal government for its violation,—it simply prohibits the shipment of intoxicating liquors into prohibition states, leaving such states free to legislate upon the subject in their own way, unhampered by considerations of interstate commerce.



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Prior to the passage of the Webb act, Congress had, as stated by the President in his veto message, "regulated the [interstate] commerce in liquors by forbidding, under §§ 238, 239, and 240 of the Penal Code (1) delivery of intoxicating liquor to any person other than the consignee, unless upon his written order, or to any fictitious person; (2) the collection of the purchase price of intoxicating liquor by any common carrier acting as agent of buyer or seller; (3) the shipment of any liquor unless labeled on the outside to show name of consignee, nature of contents, and quantity contained." These restrictions were, no doubt, of great aid to the states in the enforcement of prohibition measures, so far as they went; but intoxicating liquors, being recognized as legitimate articles of interstate commerce, might be shipped into prohibition states, and were, in spite of such legislation, protected by the government of the United States until they reached the consignee; and such liquors having come within the borders of a state in a legitimate manner, and being the subject of ownership within the state, the opportunities for the violation of the state laws forbidding the sale of such liquors were so great that it seems that the so-called "dry" states found it impracticable, if not impossible, to effectually enforce the local statutes. The Webb act was passed by both Houses of Congress and went to the President, who in a message of date February 28, 1913, vetoed the measure on the grounds, which may be summed up in the conclusions of the report of the judiciary committee of the Senate, which the President quotes with approval, as follows: "First. Interstate shipments are not completed until they reach the consignee.

"Second. An interruption or interference with interstate shipments before they reach the consignee constitutes a regulation of commerce.

"Third. Regulating interstate shipments is an exclusive function of Congress.

"Fourth. Congress cannot delegate any part of its exclusive power to the states.

"Fifth. To remove the bar or impediment of exclusive Federal power which shuts the states out of the Federal domain is to permit or sanction a state law in violation of the Constitution and in effect to delegate a Federal function to the states."

The main objection made by the President in his message was that the courts could not "entirely suspend the operation of the interstate commerce clause upon a lawful subject of interstate commerce, and turn the regulation of interstate commerce over to the states in respect to it." In a very lengthy communication from George W. Wickersham, Attorney General, to the President upon the constitutionality of the measure, which accompanied the President's veto message, the Attorney General held the law of doubtful constitutionality, for the reasons that were stated in substance by the President.

In the debates in Congress upon the measure, it was conceded by some of those opposing the same that Congress has the power to pass a law declaring intoxicating liquors to be injurious to health and good morals, and upon that express ground to entirely forbid or to restrict its transportation as an article of interstate commerce in such manner as it has exercised its power respecting the transportation of adulterated food, diseased cattle, obscene literature, lottery tickets, or women for immoral purposes; but the contention was made that inasmuch as Congress had not so denominated intoxicating liquors, that such liquors remained legitimate articles of interstate commerce, and that Congress could not, in the language of the Attorney General, "abdicate entirely its power over interstate commerce in an article which it does not itself declare to be 'an outlaw of commerce,' but which it leaves to the varying legislation of the respective states to more or less endow with qualities of outlawry."

The President, in his message, bases his refusal to sign the bill upon the principal ground "that beer and other intoxicating liquors are a recognized and legitimate subject of interstate commerce," quoting with approval the language of Justice Lurton in Louisville & N. R. Co. v. F. W. Cook Brewing Co. 223 U. S. 70, 56 L. ed. 355, 32 Sup. Ct. Rep. 189, as follows:

"By a long line of decisions, beginning even prior to Leisy v. Hardin, 135 U. S. 100, 34 L. ed. 128, 3 Inters. Com. Rep. 36, 10 Sup. Ct. Rep. 681, it has been indisputably determined:

"a. That beer and other intoxicating liquors are a recognized and legitimate subject of interstate commerce.

"b. That it is not competent for any state to forbid any common carrier to transport such articles from a consignor in one state to a consignee in another.

"c. That until such transportation is concluded by delivery to the consignee, such commodities do not become subject to state regulation, restraining their sale or disposition."

Senator McCumber contended that the President failed utterly to consider or touch upon "the theory upon which this legislation was claimed to meet the requirements of the interstate commerce clause of the Constitution," to wit, that Congress, exercising its legislative authority, has the right to outlaw commodities of the character under discussion, and that the Supreme Court has so held in reference to other commodities of like nature, and that, under such authority, Congress has the power to declare that beer and whisky and other intoxicating liquors shall be outlawed, and that Congress, having such power, the act itself, while it does not so state in terms, has the effect of outlawing intoxicating liquors in certain cases, and of declaring under what conditions such commodities might have the privileges and immunities of interstate commerce, and under what conditions they might be denied all rights of interstate commerce. The opinion of the Attorney General, accompanying the message of the President, while admitting that Congress, under the decisions of the Supreme Court, might "prohibit the carriage in interstate commerce of intoxicating liquors in the exercise of its power to regulate such commerce," contended that the bill under discussion does not declare intoxicating liquor to be an outlaw of commerce; and that it does not, as a uniform rule, prohibit its carriage in interstate commerce; and that it simply proposed to turn over the whole subject to the conflicting laws of the different states, and that it is not the exercise by the national government of its power in the manner that it has been exercised

respecting the transportation of adulterated food, diseased cattle, obscene literature, lottery tickets, or women for immoral purposes. To quote from the opinion of the Attorney General:

"But here Congress does not declare a general rule. It does not provide that liquor shall not be, as a general rule, transported in interstate commerce; it does not declare liquor to be an outlaw of commerce; it does not declare liquor to be deleterious to health or destructive of good morals; but it declares that when one of the parties interested in liquor which is the subject of an interstate shipment intends to introduce it into a state in violation of the laws of that state its carriage shall be unlawful."

Since the Webb act became a law, several of the states have enacted legislation designed to carry into effect the terms thereof. So far as I have been able to learn, the constitutionality of the measure has not as yet been considered by any Federal court, but it seems that such act has been passed upon indirectly by the highest courts of three of the states, respectively, upon local legislation. The writer has not the text of these decisions, but the information is conveyed by a telegram of date October 12, 1913, from the Honorable E. Y. Webb, the author of the bill, as follows:

"Delaware supreme court last week upheld unanimously Webb act. Have not seen text decision. Supreme court, Kentucky, practically sustained act in Com. v. Adams Exp. Co. Superior court, Iowa, recently held it unconstitutional. Act undoubtedly constitutional if state act claimed to be violated is valid under state Constitution."

The text of these decisions of the state courts cannot be obtained at this time, but any discussion of them would not be of the greatest value even if the act in question had come squarely before each of such courts for decision. This act must, of course, ultimately reach the Supreme Court of the United States in a way to determine, without question, its constitutionality, and any consideration of the decisions of the state courts upon this important measure, while extremely interesting, would not furnish any conclusive answer to the question.

Without expressing any opinion as to the practicability of the generally effective enforcement of state-wide prohibition in any event, it is manifest that if the Webb law should be declared unconstitutional by the court of last resort, the substantial enforcement of state-wide prohibition would seem to be impracticable, if not impossible; for if intoxicating liquor can, as in the past, invade a state and become the lawful property of consignees therein, it may well be doubted if any state can, with any very great measure of success, prevent its distribution to others than the consignees in violation of any local law that might be passed forbidding such distribution.

Thomas Lee Woolwine

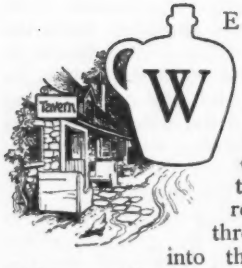
Local Control of Liquor Traffic

Whether a man believes in prohibition or not he should support this measure because it only gives the States the power more perfectly, more fully, more amply to enforce its laws. Whether you agree to the wisdom of a State passing prohibitory laws, every believer in American institutions and our theory of government should be willing to let each State determine that question for itself and aid the State in carrying out local government and home rule.—Hon. William C. Houston.

Licenses to Manufacture and Sell Intoxicating Liquors Unconstitutional

By JOHN HIPP, A. M., LL.B.

of the Denver (Colo.) Bar.



WE ask an honest and unprejudiced reading of this article before the reader decides the question. Certainly, one who reads the title and throws the article into the waste basket without reading it, is not able to judge honestly.

The public mind is saturated with the old notions that drink was good as food and valuable as a medicine. Literature is full of praise of the "ruby wine," the "life-giving wine." We are told that beer is "liquid bread." All these old notions are carefully and craftily kept alive by the expensive advertisements of the distillers and brewers.

The Declaration of Independence says: "We hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among them are life, liberty, and the pursuit of happiness."

The Preamble to the National Constitution declares: "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution of the United States of America."

We must remember that when the laws licensing the liquor traffic were first passed, the old notions were prevalent as to the great value of liquor as a food and a medicine.

Science to-day teaches that all alcohol is a poison, and never a food; that its use in medicine is so uncertain and is attended with such great danger and uncertainty, that many physicians and hospitals have entirely discontinued its use.

Now, let us look at the results of the licensed liquor traffic as expressed by the highest courts of our land, and in the light of scientific investigations.

In Pearson v. International Distillery, 72 Iowa, 348, 34 N. W. 1, the supreme court of Iowa said: "The evils flowing from the saloon are too numerous to mention all of them, but among them are idleness, poverty, pauperism, crime, insanity, disease, the destruction of human life, broken homes, and orphanages."

In Leisy v. Hardin, 135 U. S. 159, 34 L. ed. 150, 3 Inters. Com. Rep. 36, 10 Sup. Ct. Rep. 681, the Supreme Court of the United States said: "The general and unrestricted sale of intoxicating liquors tends to produce idleness, disorder, disease, pauperism, and crime."

In Schwuchow v. Chicago, 68 Ill. 444, the supreme court of Illinois said: "We presume no one would have the hardihood to contend that the retail sale of intoxicating drinks does not tend, in a large degree, to demoralize the community, to foster vice, produce crime and beggary, want and misery."

These quotations could be multiplied indefinitely from the decisions of the supreme courts of the same and other states.

In a speech entitled "The Great Destroyer," delivered in the House of Representatives at Washington, Honorable Richmond P. Hobson, representative from Alabama, reviewed, in a masterly manner, the whole liquor problem, and after the most searching investigation, said: "A scientist having investigated more than 800 cases, an-

nounces that of children born to alcoholic parents, one of every five will be hopelessly insane, one out of three will be hysterical or epileptic. More than two thirds will be degenerates. . . . In the case of total-abstaining parents the death among their children will be 13 per cent; in the case of temperate regular drinkers 23 per cent, and heavy drinkers 32 per cent. . . . Last year, on an average, each saloon in the United States was the cause of death of three men. This year, each saloon, on the average, will kill three men."

JOHN HIPP

A celebrated English physician, Dr. W. C. Sullivan, made an exhaustive study of the mortality among the children of drunken mothers. He made a report of his investigations in the Quarterly Journal of Inebriety for October 1899, where the following figures can all be verified.

To 120 drunken mothers were born 600 children, of whom 355 or more than 55 per cent were born dead, or died within two years after birth. These drunken women had twenty-eight sober female relatives who married sober husbands. These twenty-eight sober mothers gave birth to 128 children, of whom but 33, or less than 24 per cent, died within two years after birth.

In view of these facts, is it not perfectly plain that to license the saloon is subversive of every purpose of government?

Plato said that the public good is the object of state.

The supreme court of West Virginia in Moore v. Strickling, 46 W. Va. 513, 33 S. E. 274, 50 L.R.A. 279, said: "The moral law is the eternal and indestructible sense of justice and right, written by God on the living tablets of the human heart. The moral law holds its dominion by Divine ordination over us all, from which escape or evasion is impossible." The Supreme Court of the United States in the case of Crowley v. Christensen, 137 U. S. 86, 34 L. ed. 620, 11 Sup. Ct. Rep. 13, decided that the right to sell liquor was not "a natural right," not "an inherent right," not "a constitutional right," and not "an inalienable right" of any citizen of the United States.

The fact is that we have the principle of prohibition now, but for the sake of revenue, "blood money," we permit men to make and sell the poison. In short, no money, no license or sale.

In Stone v. Mississippi, 101 U. S. 314, 25 L. ed. 1079, the Supreme Court of the United States said: "No legislature can bargain away the public health or the public morals. The people themselves cannot do it, much less their servants." The court gave the reason in the same opinion, when it said: "Government is organized with a view to their (the public morals and the public health) preservation, and cannot devest itself of the power to provide for them."

John Hipp

The Law of Impeachment

BY WILLIS A. ESTRICH

NO remedy known to constitutional government so stirs up the prejudices and passions of men in its operation as the remedy by impeachment. This is due in some measure to the prominence of the men who are made subject to the remedy. No man can attain to the position of an office holder, even a holder of the most humble office, unless he has some followers. It is very likely that these followers will take the side of their leader when he is made the subject of an impeachment. There being no well-defined limits to the causes for which an impeachment lies, men naturally fix their own limits; and these limits are always fixed in favor of the impeached official by his partisans and against him by his opponents. Having thus fixed the limits of the remedy, the wisdom or ignorance of the impeachment court is determined—in their minds—by the fact as to whether it corresponds or fails to correspond with these preconceived ideas. The impeachment of an official is thus almost certain to arouse the hatreds and animosities of men, and to divide the electorate into hostile camps. The writer of The Federalist foresaw this condition of affairs, and describes it as follows: "The prosecution of them (offenses for which impeachment lies), for this reason will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. In many cases it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence, and interest on one side or on the other." [1]

[1] The Federalist, No. 65. See 1 Story, Const. § 746, to the same effect.

Purpose and Character.

The essential purpose of an impeachment proceedings is to determine whether a public officer has violated his trust and, if so, to remove him from office. Although criminal in character, its main purpose is not the punishment of the accused, but the protection of the public from a man who has shown himself disqualified to hold public office.[2] The subjects of the jurisdiction of a court of impeachment are stated by The Federalist to be "those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust." [3] Impeachment is peculiarly a political remedy; it has to do with political offenses, that is, offenses that affect society in its political character. This is best illustrated by the punishment provided upon conviction of the accused official. It is provided in the Federal Constitution and in most of the state Constitutions that the punishment shall not extend farther than removal from office and disqualification to hold any other office, with the further provision that this punishment shall not be a bar to indictment, trial, and punishment according to law for any violation of the criminal laws. It thus appears that impeachment is not regarded as a punishment for a violation of the criminal laws. One writer has characterized impeachment as "a method of national inquest into the conduct of public men." [4]

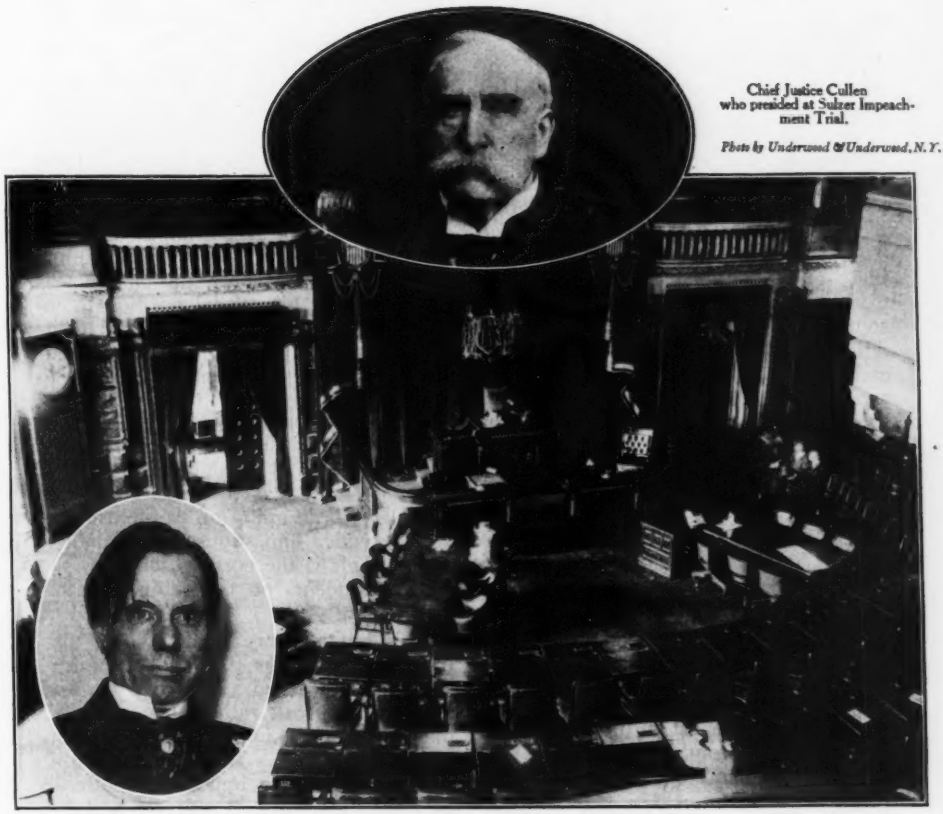
Under the Nebraska constitutional provision that "all civil officers of this state shall be liable to impeachment for any misdemeanor in office" [5] the power of impeachment extends exclusively to

[2] 1 Tucker, 419 et seq.; 1 Watson, Const. 208 et seq.; State v. Hill, 37 Neb. 80, 20 L.R.A. 573, 55 N. W. 794; Pomeroy, Const. Law, § 719; 1 Story, Const. § 746.

[3] The Federalist, No. 65.

[4] The Federalist, No. 65.

[5] § 5, art. 5, Neb. Const.



Chief Justice Cullen who presided at Sulzer Impeachment Trial.

Photo by Underwood & Underwood, N. Y.

Hon. William Sulzer
Ex-Governor of New York

Sulzer Portrait and Interior Photo Copyright by Underwood & Underwood, N. Y.

The Senate Chamber at Albany Where Impeachment Trial Was Held

public officials, and where there has been no official guilt, the remedy by impeachment will not lie.[5a]

What are Impeachable Offenses.

The answer to the question as to what are impeachable offenses is made somewhat difficult by the procedure in impeachment trials. The Senate of the United States pronounces its findings of fact and conclusions of law through the same vote,[6] thus making it difficult, if not impossible, to determine the position on the impeachability of the accused official. Nevertheless, the character of offenses which are impeachable has been determined in many instances. Before proceeding to a study of the individual cases, it seems best to notice the two views that have arisen as to whether or not an offense which is not indictable is impeachable. One theory maintains that an officer can be impeached only on account of some indictable offense which he has committed. This view is well stated in the language of an article in 6 Am. Law Reg. (N. S.) 257, to be "that no impeachment will lie except for a true crime, or, in other words, for a breach of the common or statute law, which, if committed within any county of England, would be the subject of indictment or information." The article referred to is a

[5a] State v. Hill, 37 Neb. 80, 20 L.R.A. 573, 55 N. W. 794.

[6] 26 Harvard L. Rev. 685.

very able and thorough presentation of this view of the character of impeachable offenses.

The other theory does not regard indictability as a necessary requisite to impeachment. In this view, which conforms more closely to the true nature of the remedy, it is argued that the remedy has reference to the accused's official position, and that the purpose is to protect the state from gross misgovernment. Therefore, wherever an officer has knowingly and intentionally disregarded the Constitution or a statute imposing an absolute duty on him, or has performed a duty thus imposed upon him in a wilful and corrupt manner, he is impeachable; and it is immaterial whether the act has been declared a felony or misdemeanor by statute or by the common law.

A survey of the impeachments sustains the theory that it is not necessary that the accused be guilty of an indictable offense. Judge Pickering, a district judge of the United States, was impeached in 1803 and convicted of having surrendered to the claimant a vessel taken for violating the revenue laws, without requiring the statutory bond, for refusing on the trial touching said ship to hear testimony on the part of the United States, for refusing to allow an appeal on the part of the United States from his decree in this case, and for drunkenness and profanity on the bench.[7]

Judge Chase, associate justice of the United States Supreme Court, was impeached for having expressed an opinion calculated to prejudice a jury against an accused on trial for treason; for having prevented the counsel for the accused from citing certain authorities, and addressing the jury upon the law; for having refused to excuse a juryman who had made up his mind, upon the trial of a person for libel; for having refused to permit the evidence of a material witness to be given on this trial; and for manifest injustice and partiality in the conduct of the trial. There were also other acts of oppression against prisoners charged against him, but the real reason for his impeachment was an inflammatory political harangue delivered in a charge to a grand jury.[8] Although a majority voted for the conviction of Judge Chase, the necessary two thirds could not be obtained, and he was acquitted.

Judge Peck, judge of the district court of the United States, was impeached for having caused an attorney, who had criticized a decision of his, to be arrested and imprisoned for contempt, and suspended from the bar for eighteen months.[9]

So, also, in the recent impeachment of Judge Archbald, a judge of the United States commerce court, the charge was that of using his official position to influence some corporations which had litigation pending in the United States commerce court, to enter into a contract to sell to him certain of their property.[10]

In none of these impeachments was any indictable offense charged, so it seems to be well established that it is not necessary that the accused official shall have been guilty of an offense that would render him subject to an indictment. This is the position taken by the leading students on the subject of impeachment.[11]

This latter theory is adhered to also in State v. Hastings, 37 Neb. 96, the former being regarded as too narrow, and tending to defeat, rather than promote, the end for which impeachment as a remedy was designed. The Nebraska Constitution defines an impeachable offense as a "misdemeanor in office,"[12] and the supreme court of this state, in defining this, states that "it may be safely asserted that where the act of official delinquency consists in the violation of some provision of the Constitution or statute which is denounced as a crime or misdemeanor, or where it is a mere neglect of duty wilfully done, with a corrupt intention, or where the negligence is so gross and the disregarded duty so flagrant as to warrant the inference that it was wilful and corrupt, it is within the definition of a misdemeanor in office. But where

[7] 1 Foster, Const. § 93; Pomeroy, Const. Law, § 721; 1 Tucker, Const. § 200.

[8] 1 Foster, Const. § 90; Pomeroy, Const. Law, § 721; 1 Tucker, Const. § 200.

[9] 1 Foster, Const. § 90; Pomeroy, Const. Law, § 721; 1 Tucker, Const. § 200.

[10] 48 Congressional Record, 9051–9053.

[11] Pomeroy, Const. Law, § 721 et seq.; 1 Foster, Const. § 90.

[12] § 5, art. 5, Neb. Const.

it consists of a mere error of judgment or omission of duty without the element of fraud, and where the negligence is attributable to a misconception of duty, rather than a wilful disregard thereof, it is not impeachable, although it may be highly prejudicial to the interests of the state." [13]

While Foster is of the opinion that indictability is not a necessary requisite of impeachable offenses, he states, in answer to the position that the House and Senate may remove an officer for any reason they approve, that the rule has been established that impeachment will not lie for any act that does not have at least the characteristics of a crime.[14] That it does not rest absolutely with the bodies having the power of impeachment and the power to try impeachments to say what is an impeachable offense, without reference to settled principles of law, is also the opinion of Story, as indicated in his work on the Federal Constitution, where he states that the task of defining impeachable offenses by positive legislation would be impracticable, and, this being so; "resort, then, must be had either to parliamentary practice and the common law in order to ascertain what are high crimes and misdemeanors, or the whole subject must be left to the arbitrary discretion of the Senate for the time being. The latter is so incompatible with the genius of our institutions, that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice, which might make that crime at one time, or in one person, which would be deemed innocent at another time, or in another person. The only safe guide in such cases must be the common law, which is the guardian at once of private rights and public liberties. And, however much it may fall in with the political theories of certain statesmen and jurists to deny the existence of a common law belonging to and applicable to the nation in ordinary cases, no one has yet been bold enough to assert that the power of impeachment is limited to offenses positively defined in the statute book of the Union as impeachable high crimes and misdemeanors." [15]

Tucker also takes the position that impeachable offenses are not confined to those made crimes or misdemeanors by statute or other specific law, but that it must be criminal misbehavior,—a purposed defiance of official duty,—to disqualify one from holding office.[16]

An investigation of the offenses for which men have been impeached and some convicted, however, discloses very little in the nature of crimes or misdemeanors, as those terms are usually understood. In fact some cases are disclosed in which the accused has been guilty of little else than conduct that has shown him unfit to hold the office. For example the impeachment of Judge Pickering, referred to above, and E. St. Julien Cox, of Minnesota,[17] for drunkenness; and the impeachment of Judge Chase, also referred to above, for delivering a political harangue to a grand jury, the chief offense in which consisted of a criticism of the then dominant party, are illustrations of the extent to which the remedy goes. These are extreme examples, they stand at the limit, on the one side, of impeachable offenses. It may be urged that Federal judges can be impeached for lesser causes than other officers, on account of the provision of the Federal Constitution that such judges "shall hold their offices during good behavior," thus implying that they may be removed for bad behavior.

The impeachment of Andrew Johnson further illustrates this point. Congress, over the President's veto, passed the tenure of office act, placing a restraint upon the removal of officers by the Executive, a thing which in the opinion of many lawyers is unconstitutional, and, with an evident view to an impeachment, a section was added making disobedience a high misdemeanor. Another charge was for criticizing Congress in speeches in different parts of the country.[18] Congress thus created an offense, apparently for the express purpose of impeaching the President, and, when the President

[13] State v. Hastings, 37 Neb. 96, 55 N. W. 774.
[14] Foster, Const. § 93.
[15] Story Const. § 797.
[16] 1 Tucker, Const. p. 419.
[17] 1 Foster, Const. p. 702.
[18] Foster, Const. pp. 554–557.

violated the act, impeached him and came very near to a conviction. From these extreme cases, the last two of which may justly be characterized as contests between political factions, we pass to those cases in which the remedy by impeachment has been used for the removal of officers guilty of offenses to which there can be no doubt the remedy was intended to apply. The impeachment of Judge Humphreys for treason, for refusing to hold court, for holding office under the Confederate states, and for imprisoning citizens for expressing their sympathy for the Union, is certainly such a case as was intended to be met by impeachment. Governor Butler, of Nebraska, impeached for appropriating state funds to his own use;[19] Lieutenant-Governor Davis, of Mississippi, impeached for selling a pardon to a convicted murderer while the governor was absent from the state;[20] Judge Osborne of Georgia for falsification of returns upon an election to Congress;[21] George M. Wickliffe, auditor of public accounts of Louisiana,[22] impeached for issuing an unauthorized warrant in payment of an illegal claim, are all cases in which the offenses are very clearly such as the impeachment provisions were intended to guard against.

Offenses Committed Prior to Taking Office.

Counsel for the defense in the recent impeachment trial of William Sulzer, governor of New York, urged as one of the chief grounds for the defense that an offense committed prior to taking office is not an impeachable offense. Mr. Sulzer was charged with having made and verified an incorrect statement of his campaign receipts and expenditures, an act which took place prior to his taking office. In his argument before the court, Mr. Marshall contended for the defense, after referring to prior impeachments: "In every single instance the impeachment was for misconduct in office. This is the first time in 135 years of American constitutional history, when the attempt has been made to impeach any public officer for any cause other than misconduct in office." The court took a different view, however, and Mr. Sulzer was convicted on articles charging offenses prior to his taking office.

The question was proposed to an assembly judiciary committee of the state of New York in 1853 as to whether a person may be impeached and deprived of his office for malconduct, or offenses done or committed, under a prior term of the same or any other office. The committee answered the question in the negative, stating that neither by the Constitution nor by the laws is there any period limited in which an impeachment may be found; therefore it is but fair to infer that the intention was to confine the time to the term of office during which the offenses were alleged to have been committed. A committee of investigation into state officers was accordingly instructed by a resolution of the assembly that a person holding an elective office is not liable to be impeached for any misconduct before the commencement of his term, although it may have occurred while he held the same or another office under a previous election.[23]

It is argued that the people, by electing the official to office, have pardoned the offense and elected him notwithstanding.

In the impeachment of George C. Barnard, a justice of the supreme court for the county of New York, the court considered misconduct which occurred during a previous term. By a writer on the New York Constitution this case is stated to be no authority for the proposition that such misconduct alone is sufficient to support an impeachment, since there was also in this case evidence of misconduct occurring during the term in which the impeachment was brought.[24]

The supreme court of Nebraska, after referring to the impeachment of Judge Barnard, and that of Judge Hubbell, of Wisconsin, and Governor Butler, of Wisconsin, in each of which impeachment was held to lie for an offense committed during a prior term of office, states that

[19] 1 Foster, Const. App. p. 702.
[20] Id. 683.
[21] Id. 677.
[22] Id. 689.
[23] 4 Lincoln's Const. Hist. of New York, p. 604.
[24] 4 Lincoln's Const. Hist. of New York, p. 606.

each respondent was a civil officer at the time of the impeachment, and had been such since the alleged misdemeanors in office were committed; that the fact that the offense occurred in a previous term is immaterial, as the object of impeachment is to remove a corrupt or unworthy officer.[25]

These different views arise from the different theories as to the nature of an impeachable offense. If such an offense is confined to official misconduct, it must necessarily follow that offenses occurring prior to the taking of office by the impeached official are not impeachable offenses. Here should be noticed a distinction between offenses occurring while the accused was still a private citizen and those occurring in a prior term of office. It can reasonably be claimed that offenses occurring during a prior term of office constitute such official misconduct as will support an impeachment, although the opposite position has been taken as noted above; but offenses occurring while the accused is a private citizen can certainly not constitute official misconduct.

Who Subject to Impeachment.

The Constitution of the United States provides that "the president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors. Art. 2, § 4.

It is generally admitted that officers of the Army and Navy are not within the officers who may be impeached under the Federal Constitution, as they do not come within the term, "civil officers." It is reasonable that they should be excluded from the operation of impeachment as they are subject to trial according to military laws. It is quite well established that the term, "civil officers," does not include Senators or Representatives. This was established in the impeachment of Senator William Blount. Pending the impeachment proceedings, Blount was expelled from the Senate and subsequently filed a plea to the jurisdiction of the Senate to try him. This plea was sustained and the impeachment dismissed. While it may be urged, as was urged by Wharton,[26] that this case merely decides that a Senator who has been expelled is not thereafter subject to impeachment, it has commonly been accepted as deciding that a Senator is not subject to impeachment, because he is not a civil officer of the United States.[27] The term, "civil officers," therefore includes judges of the Federal courts and subordinates in the Executive Department.

The state Constitutions have various provisions as to who is subject to this remedy.

Impeachment after Term of Office Has Expired.

The question arose upon the trial of the impeachment of William W. Belknap, for accepting bribes while Secretary of War, whether one who is no longer an officer can be impeached. Prior to the adoption of the articles of impeachment, Mr. Belknap resigned and his resignation was accepted. Upon the trial he filed a plea to the jurisdiction of the Senate on the ground that he was no longer an officer and therefore was not subject to impeachment. This plea was overruled, but he was acquitted, and upon the final vote, a majority of the Senators who voted for acquittal did so on the express ground that the Senate had no jurisdiction. The case has usually been regarded as deciding that one cannot be impeached after he has ceased to be an officer.

The supreme court of Nebraska, after referring to the constitutional provision that judgment in cases of impeachment shall not extend farther than removal from office and disqualification to hold and enjoy any office of honor, profit, or trust, states that the necessary implication from this provision is that the accused must be in office at the time the impeachment proceedings are commenced; that in case of impeachment either one of two judgments can be pronounced, namely, removal from office, or removal from office and disqualification to hold office; and that it is obvious that

[25] State v. Hill, 37 Neb. 80, 20 L.R.A. 573, 55 N. W. 794.

[26] Blount's Impeachment, Wharton's State Trials, p. 317, note.

[27] 1 Foster, Const. § 91; Pomeroy, Const. Law, § 716.

there can be no judgment of removal where the party was not an officer when impeached.[28] Referring to the argument that a judgment of disqualification might be entered without a judgment of removal, the court states: "All will concede that disqualification to hold office is a punishment much greater than removal; so that if the construction contended for by counsel be the true one, then in case the person impeached is out of office, he is liable to a more severe penalty than might have been inflicted upon him had he been impeached before he went out of office. We cannot believe that the members of the convention who framed the Constitution so intended." [29]

On the other hand, it has been argued that the remedy by impeachment is intended to disqualify one who has shown himself unfit to hold public office, and not merely to remove him, and that this power will be ineffectual if, by resigning, he can escape the penalty, or if the remedy is unavailing after the term of office has expired. It is urged that the acts which render the officer guilty of conduct which would subject him to impeachment may not be discovered until after the term has expired and that the public good might demand that such a person be disqualified from holding office.

The trial of impeachments has offered an opportunity for the display of legal talent such as no other forum offers. And it is well within the facts to say that the legal talent which has been thus engaged has proved equal to the opportunity and given some of the best and most lucid examples of constitutional construction in legal literature. Not only have there been clear constitutional arguments, but there also have been examples of arguments on facts that are unexcelled. Whatever other criticism can be made of the remedy by impeachment, it cannot be charged that the trials have not been managed in a masterful manner.

Willis A. Estrich

[28] State v. Hill, 37 Neb. 80, 20 L.R.A. 573, 55 N. W. 794.
[29] Ibid.

Parliamentary Impeachments

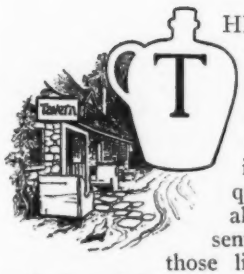
Cases can doubtless be found wherein Parliament has exercised this high power in a most extraordinary manner and convicted persons upon charges not indictable. The power of Parliament over the subject is far greater than that which the two Houses of Congress can exercise over the citizen. The power of Parliament embraces impeachments, bills of attainder, and bills of pains and penalties. In times of high party excitement this power has been in some cases most shamefully and oppressively exercised. Excitement arising from other causes has sometimes put this irresponsible engine of good and evil into motion.

No precedent should be followed which is not founded in reason. The enlightenment of the present day should not be obscured, nor its progress obstructed, by the follies, mistakes, or passions of men who passed away centuries ago. Who would think of respecting the infamous ruling of Jeffreys in Sidney's case because it was the act of a judge upon the bench? And yet who does not know that many of the parliamentary impeachments were as full of passion and as void of law as the court in which Sidney, and Russell, and Armstrong, and Baxter were tried?—From Report of Minority of Committee on Impeachment of President Johnson.

Legal Aspects of Prohibition

BY HERBERT C. SHATTUCK, A.B., LL.B.

Of the New York Bar



THE basic fact underlying all agitation for the restriction or prohibition of the traffic in intoxicating liquors is that alcohol, the essential ingredient of those liquors, is inherently harmful and dangerous when used as a beverage. The scientific accuracy of this statement seems now to be generally recognized. The public schools of the nation teach it. Alcohol is a waste product in the activity of the yeast plant,[1] an excrement of the yeast fungus, a parasite which is midway between a plant and an animal.[2] Alcohol is an active poison to the nervous system;[3] it ranks with other poisons, like strychnine, arsenic, and opium.[4] If it is a food, it is a poisoned food.[5]

This dangerous character of alcoholic liquors is recognized also by the courts. They have declared that intoxicating liquor in its nature is dangerous to the morals, good order, health, and safety of the people, and is not to be placed on the same footing with the ordinary commodities of life.[6]

Liquor Traffic not Like Other Kinds of Business.

If, then, alcohol is a dangerous drug, it is but natural that the traffic in alcoholic liquors should not be considered in the same light as business of other kinds, but should be separated from them and be treated on its own merits. The courts recognize this fact. They say that intoxicating liquor is an article conceded to be fraught with such contagious peril to society that it occupies a different status before the courts and the legislatures from that of other kinds of property, and traffic in it is thereby placed upon a different plane from that of other kinds of business. There is, therefore, no question in cases dealing with intoxicating liquor of the power of the legislature to say generally what beverages men shall drink or what they shall eat or wear. The discussion in these cases must deal solely with a distinct article of trade.[7] The business of liquor selling is looked upon very differently from the ordinary avocations of life. It is not considered as of equal dignity, respectability, and necessity to that of the grocer, dry goods dealer, or clothier.[8] It does not stand upon the same plane of utility and morality with the useful arts, trades, and professions.[9] This attitude of the law is based upon the well-known fact that the traffic in intoxicating liquors has brought intemperance, poverty, and misery upon many of our citizens, and has been a fruitful source of crime on every hand. This distinguishing feature is peculiar to the liquor traffic.[10] In this respect, the liquor traffic has formed an exception to other legitimate business.[11]

Evil Effects of Liquor Traffic Generally.

Having shown that alcohol is a poison,

[1] C. F. Hodge, Clark University, "Physiological Aspects of the Liquor Problem."

[2] T. Alexander MacNicholl, M. D., New York, Vice President American Medical Soc. for the Study of Alcohol and Other Narcotics.

[3] 1 Wharton & S. Med. Jur. 5th ed. § 921.

[4] Sir Andrew Clark, Physician to Queen Victoria.

[5] Dr. F. Peterson, New York.

[6] State ex rel. George v. Aiken, 42 S. C. 222, 20 S. E. 221, 26 L.R.A. 345; Schwartz v. People, 46 Colo. 239, 104 Pac. 92.

[7] State v. Durein, 70 Kan. 1, 78 Pac. 152, 15 L.R.A.(N.S.) 908, opinion on rehearing 70 Kan. 13, 80 Pac. 987.

[8] State v. Calloway, 11 Idaho, 719, 114 Am. St. Rep. 285, 84 Pac. 27, 4 L.R.A.(N.S.) 109.

[9] Mix v. Board of County Comrs. 18 Idaho, 695, 112 Pac. 215, 32 L.R.A.(N.S.) 534; Robison v. Haug, 71 Mich. 38, 38 N. W. 668.

[10] State v. Parker Distilling Co. 236 Mo. 219, 139 S. W. 453.

and that the alcoholic liquor traffic must be judged on its own record, let us now ask: What, in brief, is the result of that traffic? And for our answer we will go to the courts and to special authorities.

The argument that laws restricting the liquor traffic are sumptuary as regulating what a man shall drink is not convincing, for when liquors are taken in excess, the injuries are not confined to the offending party. The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens; and in his self-abasement, which it creates. But as it leads to neglect of business, waste of property, and general demoralization, it affects those who are immediately connected with and dependent upon him. The statistics of every state show a greater amount of crime and misery attributable to the use of ardent spirits obtained at the retail liquor saloon than to any other source.[12]

The liquor traffic is one of the greatest evils of the age, a constant menace to society, not alone from a moral standpoint, but from an economic one as well.[13] The traffic has a most degrading effect upon the moral and physical condition of our race, has proved to be the leading incentive to crime, and is doing more to disqualify men for self-government than all other influences combined.[14] There is no more potent factor in keeping up the necessity for asylums, penitentiaries, and jails, and in producing pauperism and immorality throughout the entire country.[15] All other evils together will not destroy a tithe of the number of human lives, nor produce the moral degradation of society, or the pauperism and crime in the community, or the destitution of families, that will flow from liquor selling for the selfish end of private gain.[16] There is no statistical or economic proposition better established than that the use of intoxicating liquors as a drink is the cause of more want, pauperism, crime, and public expense than any other cause, and, perhaps it should be said, than all other causes combined.[17] Thinking men of this day largely concur in the opinion that the influence of the saloon and the idleness and vice of the multitudes of its clientage united constitute the great peril to American institutions. Nothing but evil flows from this source.[18]

The connection between alcoholism and crime is shown by the continual increase of crimes in civilized countries at just the rate at which the consumption of alcoholic drinks increases; the days and months when crimes are most frequent are just those when alcoholic drinks are most used, a very large percentage being committed on Saturday night and a very small percentage on Monday. Alcohol is also a powerful factor in insurrections.[19] And Aschaffenburg, in his work on "Crime and Its Repression," p. 45, states that among the Upper Bavarians, under the influence of Sunday and holiday drinking bouts, the "fighting lust" has become a recognized folk custom.

That officials charged with the duty of preserving public order and safety recognize the liquor traffic as a powerful ally of crime, is clearly shown by the fact that in times of public disaster or uprisings, saloons are summarily closed until the special danger is passed. Thus in that admirable legal argument against the constitutionality of liquor license laws, "The Legalized Outlaw" by Judge Samuel R. Artman, it is related (p. 183) that at the time of the earthquake disaster at San Francisco, on April 18, 1906, there were 3,400

[11] Schwuchow v. Chicago, 68 Ill. 444.

[12] Crowley v. Christensen, 137 U. S. 86, 34 L. ed. 620, 11 Sup. Ct. Rep. 13.

[13] Schwartz v. People, 46 Colo. 239, 104 Pac. 92; Henderson v. Heyward, 109 Ga. 373, 77 Am. St. Rep. 384, 34 S. E. 590, 47 L.R.A. 366; Schmidt v. Indianapolis, 168 Ind. 631, 120 Am. St. Rep. 385, 80 N. E. 632, 14 L.R.A.(N.S.) 787.

[14] Our House v. State, 4 G. Greene, 172.

[15] State ex rel. George v. Aiken, 42 S. C. 222, 20 S. E. 221, 26 L.R.A. 345; Mix v. Nez Perce County, 18 Idaho, 695, 112 Pac. 215, 32 L.R.A. (N.S.) 534.

[16] Goddard v. Jacksonville, 15 Ill. 589, 60 Am. Dec. 773; Luther v. State, 83 Neb. 455, 120 N. W. 125, 20 L.R.A.(N.S.) 1146.

[17] Santo v. State, 2 Iowa, 165, 63 Am. Dec. 487.

[18] Pearson v. International Distillery, 72 Iowa, 348, 34 N. W. 1.

[19] Lombroso, "Crime; Its Causes and Remedies," pp. 91, 100.

saloons in the city, and prior to that date there were, on an average, one hundred and twenty-five criminals arraigned in the police court daily. From the disaster until July 5th, there was strict prohibition in the city, enforced by military power, and during this period the average daily arraignments in the police court numbered about four. Within three days after the reopening of the saloons the daily arraignments in the police court had again run up to one hundred and thirty-four.

The liquor saloon is not only a prolific breeding place of crime, but it often serves as a hiding place for criminals. One of the largest detective agencies in New York city, after an experience of over a quarter of a century, writes the instinct of their men tells them in a criminal matter to look to the saloon as the place to find their quarry.[20]

Drunkenness, as fostered by the legalized liquor traffic, is also a constantly recurring factor in the disruption of family life. It is one of the chief causes of separation and divorce in Germany.[21] In the United States, during the five years 1887-1891 inclusive, 592 divorces were granted to husbands for the drunkenness of their wives, and 5,397 divorces were granted to wives for the drunkenness of their husbands. In the five-year period 1902-1906 inclusive, or fifteen years later, these numbers had grown to 1,093 and 11,942, respectively,—an increase in divorce for wife drunkenness of 84% and for husband drunkenness of 121%.[22] And these figures are for drunkenness as the sole cause of divorce, and do not include cases where drunkenness is one of several co-operating causes; these not being set out by themselves, but, without doubt, constituting as large a group of cases.

Judge Wm. N. Gemmill's report for the court of domestic relations in Chicago, covering the year from April 3, 1912, to April 3, 1913, the second year of the court's existence, shows that 3,699 cases were heard and disposed of, 2,432 of which were for wife or child abandonment or failure to support. Among the causes of the latter, excessive use of intoxicating liquors held first place as causing 46%, the next greatest cause being for only 12%.

The causal relation between alcoholic liquors and disease is becoming more and more apparent. Sir Victor Horsley names forty diseases due to alcohol alone or as a contributing cause. The International Congress of Tuberculosis, meeting in Paris in 1905, passed the following resolution: "That in view of the close connection between alcoholism and tuberculosis, this Congress strongly emphasizes the importance of combining the fight against tuberculosis with the struggle against alcohol." And Livingston Farrand, M. D., Executive Secretary of the National Association for the Study and Prevention of Tuberculosis, states that, although it is extremely difficult to make any definite statement as to the effect of alcohol in tuberculosis, yet it is perfectly well recognized that alcoholism is not only an important predisposing factor in that dread disease, but that it is also extremely detrimental in the course of the disease.[23] T. D. Crothers, M. D., of Hartford, Connecticut, is authority for the statement that over 10% of all mortality is due to alcohol, and that fully 20% of all diseases is traceable to that cause.

In the last fifty-three years, the country's population has increased 330%, while the number of insane and feeble-minded has increased 955%. During the past five years, the birth rate in the United States has fallen off 33 1-3 %. Both the spread of chronic diseases and the lessened fertility of the race point to a rapid increase in degeneracy, and back of all the intermediate agencies contributing to this degeneracy stands alcohol, the chief degenerative factor.[24]

The close connection between the liquor traffic and prostitution is shown by

[20] Personal letter from Drummond's Detective Agency, October 30, 1913.
[21] Lombroso, p. 90.
[22] Statistical Abstract of United States, 1912.
[23] Personal letter, October 30, 1913.
[24] T. Alexander MacNicholl, M. D., in address before American Medical Society for the Study of Alcohol and Other Narcotics, Atlantic City, June 3, 1912, basing his figures upon the statistical abstract of the United States for 1911, the United States census bureau reports, and statistics compiled by Dr. J. H. Kellogg.

the recent report of the vice commission of Chicago, one chapter out of seven being devoted to that subject. In the commission's consideration and investigation of the social evil, it found as the most conspicuous and important element in connection with the same, next to the house of prostitution itself, was the saloon, and the most important financial interest, next to the business of prostitution, was the liquor interest. And the commission declares that as a contributory influence to immorality and the business of prostitution, there is no other interest so dangerous and so powerful in the city of Chicago.[25] It is generally admitted by students of that problem that prostitution could not exist to anywhere near its present extent without the aid and co-operation of the liquor traffic.

The effect of the liquor traffic upon mortality has already been suggested. Statistics of the United Kingdom Temperance and General Provident Institution, covering the period 1841-1901, and reported to Parliament in 1904, show that at 30 years of age the average insured nonabstainer may expect to live 35 years longer; the average abstainer may expect to live 38.8 years longer, or 11% longer than the average; at 40 years of age the nonabstainer may expect to live 27.3 and the abstainer 30.3 years. The Security Mutual Life Insurance Company for some years past has separated its risks, for the purpose of declaring dividends, into two classes, drinkers and abstainers, and the result has been a very considerable benefit to the abstainers. The National Temperance Life Insurance Society, recently organized, confines its membership exclusively to total abstainers, the basic principle of the society being that the total abstainer is a better life insurance risk than the drinker.

Relation of Liquor Traffic to Insanity.

Judicial, medical, and special authorities might be multiplied to fill volumes, all to the effect that the liquor traffic, when judged by its actual results, is evil and wholly evil. But space forbids our going further, except in two special lines; and first, as to its relation to insanity.

The census of 1910 shows that the population of the country grew 11% in the five years 1904 to 1910, but that of the insane asylums grew about 25%. The insane in institutions in the United States, January 1, 1910, numbered 187,554,—more than the students in colleges and universities at the same date. The report of the state hospital commission of New York for the year ending September 30, 1912, shows that there are 14 state civil hospitals for the insane, 2 for the criminal insane, and 22 licensed private institutions, with a total population of 33,972,—one to every 282 of the state's inhabitants. According to the same report, of the first admissions that year among the males, 52.2% were moderate drinkers, 13.8% were intemperate, 22.7% had alcohol as the assigned cause of insanity, 5.6% were unascertained, and 5.7% were abstainers.

This causal relation between alcoholism and insanity seems to be borne out by the authorities. Thus it is said that among the exciting causes of insanity alcohol takes front rank. It is a direct poison to the nervous system.[26]

Doctor Thomas W. Salmon, of the national committee for the study of mental hygiene, declares that, excluding poverty and crime, there is probably no more disastrous result of alcoholism than the continual procession of unfortunates who are entering hospitals for the insane because of intemperance. Among the chief causes of insanity are poisons of various kinds, the most potent of which is undoubtedly alcohol. This poison acts in two ways, inducing insanity in the individual and causing a hereditary predisposition to insanity in the offspring.[27]

The close relation between alcohol and insanity has only recently been fully realized. Fully 30% of the men and 10% of the women admitted to the state hospitals are suffering from conditions due directly or indirectly to alcohol.

[25] The Social Evil in Chicago, 1911, p. 119.

[26] 1 Wharton & S. Med. Jur. 5th ed. § 589.

[27] James H. Lloyd, formerly Neurologist in the Philadelphia Hospital, in article on "Insanity," 8 Americana.

These conditions may be brought on by the regular use of alcohol even in moderate quantities not producing intoxication. The children of those addicted to alcohol often start in life with morbid tendencies, or mental defects.[28] Everett S. Elwood, executive secretary of the committee on mental hygiene of the State Charities Aid Association of New York, states as his opinion, after a careful study of the subject, that 24% of first admissions to state hospitals either owe their insanity directly to the use of alcohol or as such habitual users of that drug that its use played an important part in bringing about their mental breakdown.[29] Other authorities credit alcohol with being the cause of 25% of all the cases of insanity,[30] or even 50%.[31]

Relation of Liquor Traffic to Child Life.

We must now pass to the second line of special inquiry as to the results of the liquor traffic, and that may be summed up in what is perhaps the saddest comment of all upon the traffic, *viz.*, that it is a curse to childhood. This is shown not only in the poverty, wretchedness, and deprivation of the drunkard's home, but in the fact that by such conditions thousands of children are forced to labor in mills and factories when they should be at play or in school. And worst of all, in this connection, is the fact of heredity. Thus it is said that habitual drinkers are not only immoral themselves, but they often beget children who are defective, delinquent, or precocious debauchees.[32] Aschaffenburg, in his book on "Crime and Its Repression," p. 69, declares that the descendants of inebriates are seldom of normal health and intelligence.

And Lombroso goes on to say (p. 88) that since abortions are more frequent among women who drink, families of drinkers show a fecundity of only one half to one quarter that of temperate and sober couples. Marriages of drinkers give an average of 1.3 children, those of abstainers 4.1. Through heredity, alcohol may act as a cause of idiocy and imbecility in the offspring, or of a chronic degeneration upon which as a foundation various forms of insanity may be firmly fixed.[33] Statistics collected independently by several investigators show that the parents of nearly 50% of defective children were alcoholics. Examinations of birth dates of idiots and imbeciles in Switzerland show that conception occurred in a large proportion of cases at seasons of the year when celebrations of certain festivals were in progress, accompanied by much intoxication. It is said that this fact is popularly recognized, and that such children are known in certain districts as "rauschkinder" (jag children).[34]

In the case of drinking parents, alcohol attacks the child at the moment of his conception, follows him during the fetal life, endangers him in his mother's milk, and its action is enhanced during his whole life only to be in turn transmitted to his children, its primitive taint doubled by the continued action of the poison. Thus upon investigation of 97 cases of children conceived during the intoxication of the father, it was found that only 14 were normal, the other 83 suffering some abnormality, such as scrofula, tuberculosis, atrophy, or retarded development.[35]

Dr. T. Alexander MacNicholl states that his studies during twenty years, continuous to June, 1912, indicate a steadily increasing degeneracy among drinkers' children; one out of every five such children is insane; one out of every three suffers from epilepsy and hysteria; 75% of the tuberculous children are children of drinking parents. He goes on to say that among the school children of New York city examined by him, 62% were found to be children of drinking parents and 91% of these were suf-

[28] Pamphlet No. 121, "Why Should Anyone Go Insane?" issued by State Charities Aid Association of New York, 1911.

[29] Personal letter, Oct. 22, 1913.

[30] Dr. Amos J. Givens, in a recent issue of the Medical Record (New York).

[31] Lord Shaftesbury, for fifty years head of the English Lunacy Commission, quoted in 2 Clevenger, Med. Jur. of Insanity, p. 633.

[32] Lombroso, p. 95.

[33] 1 Wharton & S. Med. Jur. 5th ed. § 589.

[34] Doctor Thomas W. Salmon.

[35] Dr. A. Bienfait, Secretary Medical Temperance Society of Belgium, in Scientific Temperance Journal, November, 1912.

fering from some functional or organic disease. Of more than four million school children investigated in the United States, more than 50% were mentally and physically defective, and of those physically defective, less than 20%, and of those mentally defective, less than 1%, were free from hereditary alcoholic taint. For every child of total abstainers that dies under two years of age, five children of drinkers die.

As illustrative of these general statements should be mentioned the results of a comparative investigation of two groups of families living under the same conditions and in the same environment, conducted by Dr. MacNicholl and reported by him in the address above referred to (see footnote 24). In ten families of regular drinkers, there was a total of 65 children, 30 of whom died in infancy, 1 was insane, 1 epileptic, 4 anemic, 1 diabetic, 2 imbecile, 5 neurotic, 8 tubercular, 3 had very poor teeth, 3 had heart disease, 3 had adenoids, and four were normal. Of the 25 children who went to school, 2 were excellent, 6 were fair, 17 were deficient. In ten families of total abstainers, there was a total of 70 children, 2 of whom died in infancy, 1 was anemic, 1 tubercular, 1 neurotic, 1 rheumatic, and 64 were normal. Of the 68 who attended school, 56 were excellent, 10 were fair, and 2 were deficient. Thus of the children of total abstainers, 90% were normal in mind and body, as against 7% of drinkers' children. In other words, where the parents were drinkers, alcohol actually injured or destroyed 83% of the children; and 97% of the children of total abstainers were proficient in their studies, as against 32% of the children of drinking parents. And furthermore, 97% of the children of abstainers went to school, whereas only 39% of the children of drinkers were able to go.

Of striking similarity to these studies were those conducted by Demme and quoted by Aschaffenburg, in his work on "Crime and Its Repression," p. 69. In ten families where there was no intemperance, there were 50 normal children which lived, 2 were afflicted with St. Vitus' dance, 2 were mentally deficient, and 2 had congenital malformations. In ten families of drunkards, living under the same economic conditions, there were only 10 normal children, 25 died, and 22 others were mentally deficient, cripples, or epileptics. And in the same work, Legrain is reported to have found similar conditions. Of 761 children of drunkards, 72.6% were degenerate, *i. e.*, mentally deficient, epileptic, or insane.

[Ed. Note.—In the second and last instalment of the critical study to appear in January, the author treats of prohibitory laws, their constitutionality and results.]

A Social Peril

The liquor traffic is a peril to society, because it undermines the health, the strength, and the integrity of man. It is a menace to the Republic, because a race of weaklings cannot sustain or comprehend the institutions of liberty. It is a source of danger to posterity, because the alcoholic taint foredooms the unborn millions to degeneracy and to disease. I shall oppose it because its abolition will mean a new stability for the Republic, a new radiance for the flag."—Hon. Morris Sheppard.

Enforcement of Laws Regulating Saloons in Cleveland

BY DAVID E. GREEN

of the Cleveland Bar.

THE Baptist Brotherhood of Cleveland is composed of some two thousand citizens affiliated with the Baptist churches of the city. This organization initiated a movement on October 30, 1911, to enforce the state law providing for the closing of saloons on Sunday.

After investigation it was found that practically all of the two thousand or more saloon-keepers of Cleveland were openly and flagrantly violating the Sunday closing law without any opposition from the city officials. In November of 1911, the officers of the Brotherhood called upon Mayor Herman C. Baehr, the director of public safety and chief of police, in an effort to secure enforcement of this law by the proper authorities. These efforts were entirely without success. On January 1, 1912, Newton D. Baker became mayor of Cleveland. After another investigation made in January, it was found that there had been no change in the condition, and on January 19, 1912, forty citizens, who were members of the Baptist Brotherhood, called upon Mayor Baker, requesting from him a definite statement that he would enforce the Sunday closing law. No definite statement was given by the mayor.

The Brotherhood then undertook the enforcement of this law on its own initiative, and brought several cases in a justice court in the city of Cleveland. The defendants were bound over to the grand jury, where they were discharged. Affidavits and witnesses were then presented to the police prosecutor of the municipal court of the city, with a request that warrants be issued for the defendants. The police prosecutor refused to issue warrants, explaining that it was against the policy of the administration to issue warrants in this class of cases, except upon the complaint of policemen.

Believing that convictions of the offenders could not be secured through the Cleveland courts, the Brotherhood then caused affidavits for arrest to be filed with John R. McQuigg, mayor of East Cleveland.

Three test cases were started, and after convictions were secured, the defendants filed petitions in error in the common pleas court, where the decisions of Mayor McQuigg were affirmed. Petitions in error were then filed in the court of appeals, where the decisions were again affirmed. They then filed a motion in the supreme court of Ohio for leave to file a petition in error, which motion was refused, thereby affirming the decision of the court of appeals.

On March 29th, which was the first Saturday after the decision of the test cases by the court of appeals, a notice was posted in one of the leading downtown saloons, saying that the place would be closed the next Sunday. This was a signal to the hundreds of other violators who then saw the significance of the court's decision, and posted similar notices during the next week. In one case the following notice is said to have been posted, "This saloon will be closed next Sunday by order of the Baptist Brotherhood." By the second Sunday in April there was a substantial compliance with the Sunday closing law throughout the city.

David E. Green

Practical Difficulties

BY HON. FRANK W. CLANCY

Attorney-General of New Mexico

TO the general discussion of intoxicating liquors, whether scientific or practical, I shall attempt to make no contribution. It has occurred to me that it might be of interest to give some account of conditions of the liquor traffic in one state, and of the experience of persons who have made attempts to improve them. It is quite probable that they are similar to conditions and experiences in many other places.

I will not attempt any argument on the subjects of prohibition or regulation of the retail liquor business, but will merely state my own position so that what follows may be clearly understood. I am not a prohibitionist for two reasons: First, I am not convinced that the use of liquors is such an unmitigated evil that it should be entirely prevented; and, second, I am convinced that attempted prohibition is not the best remedy for the acknowledged evils of the liquor business. I do not minimize those evils which have been so forced upon my attention in my professional experience that I realize them as fully as anyone and perhaps more fully than many of the good people who desire the total suppression of the business without having any practical knowledge about it.

In New Mexico we have a system of licensing retail liquor dealers, but with very little in the way of regulation. That system, as it now exists, began with legislation in 1891, and provided for licenses to be paid by retail sellers of liquor, varying from $100 to $400 per annum, according to the population of the place where the business was to be carried on. Anyone could obtain a license if he had the required amount of money with which to pay. The proceeds of these licenses were used for the schools, going in part to the general county school fund and in part to the school fund of the district in which the license was exercised. Municipalities were, however, by an act of 1893, given power to license, regulate, or prohibit the liquor business, and under this power many incorporated places provided for much higher licenses, while a very few have prohibited the sale of liquor. On the whole, however, there has been little in the way of municipal regulation.

In 1905, we had the first and only general legislation which has attempted any substantial, practical limitation on liquor dealers. It was then provided that no license should be granted for use in any place containing less than one hundred inhabitants, and that there should be no saloon within certain distances from any government sanatorium, military reservation, or some of the higher educational institutions. It was also provided that no licenses should be issued for use within 3 miles of any place where men were engaged in the construction of railroads or other public works, and power was given to county commissioners and to municipal authorities to revoke a license, upon hearing, if the licensee violated any of the provisions of his license or conducted a disorderly saloon. This power to revoke licenses has been very little used.

In 1906, I was asked by a wholesale liquor dealer who, perhaps erroneously, thought that he was a person of advanced and enlightened ideas, to prepare a bill for the regulation of the retail liquor traffic so that it would be put upon a more respectable basis, for presentation to the session of our legislature in the following January. I will say here, parenthetically, that when he saw the bill, after the legislature had met, I am informed that he said, in tones of horror,

"My God, this would destroy my business."

I entered upon the work with great interest and much zeal. I obtained the statutes of a number of states, such as Massachusetts, New Hampshire, and Pennsylvania, which were said to have had the best success in dealing with this matter, and evolved a plan for the regulation of the business by means of a state commission of three members, who should give all of their time to the work, which would be quite necessary in view of the great size of the state. This plan provided for high license and strict regulation, with power in the state commission to refuse licenses to any unfit person, and to revoke the license of any person guilty of violation of the act or of other crimes. There were five classes of liquor dealers, the licenses being for varying amounts to the different classes. Details of all of the proposed provisions would here occupy too much space, but it will be sufficient for present purposes to say that they created a system of complete and stringent regulation, with almost unlimited power in the state commission, so as to control the business as fully as possible.

There can be no doubt that in this, as in some other governmental matters, complete, satisfactory, and uniform administration of the law can be had only by means of a central state authority. If the matter be left to county authorities, there would be almost as many different kinds of law, practically, as there are counties. In New Mexico, in a county in the northwestern part of the state, public sentiment is such that no applicant for a retail liquor license could measure up to the standard which would be required by the county officers, and no license would ever be granted, while in other counties no man could be found of such inferior character that he would be refused a license.

My bill was introduced in the legislature, but, owing to certain factional disturbances, which sometimes afflict the best of legislatures, even those which we have in New Mexico, there was no opportunity for it to receive any consideration. Prior to the meeting of the next legislature, in January, 1909, I had my bill printed at my own expense and distributed all over the then territory, and as a beginning succeeded in exciting the violent hostility of both prohibitionists and liquor dealers. I had the pleasure of being denounced by the first as the hired tool of the liquor interests, while the liquor sellers declared that the ——— villain was trying to ruin their business. Better indorsement could not be asked. The then president of the anti-saloon league of New Mexico assured me, personally, of his violent opposition, but when I asked him for what reasons, he was compelled to admit, in a brief conversation on the floor of the upper house of the legislature, that he had never read it. As nearly as I can understand it, the position of the anti-saloon league in this part of the country appears to be that any mitigation of the saloon evil by regulation is not desirable, because it is much better that the saloons should be of the worst possible character so that such sentiment may be created against them as will bring the business to an end. The futility of any such hope ought to be apparent.

The bill, when introduced in that legislature, was referred to a committee the chairman of which, unfortunately, was the owner of two groggeries in the county which he was supposed to represent, and it was impossible to get it reported. I heard him make the amusing assertion that he had that bill, and other obnoxious measures referred to him, carefully locked up in a strong box, of which no one but himself had the key.

Owing to action by Congress, we had no later session of the territorial legislature, and the first session of the state legislature was held in 1912, beginning in March, and the second session begun in January, 1913. I had my bill introduced in the house at the first session, and was agreeably surprised to find that it attracted a great deal of favorable attention, and was earnestly discussed in committee, amendments proposed, and various changes made, as to which I was consulted fully and frequently. There was an active prohibition lobby at work, however, which assisted in preventing the passage of the bill or of any similar bill, although there was not the slightest

hope of obtaining any prohibitory legislation. At the second session, the bill was introduced in the senate, but its fate was sealed by reference to a committee, the chairman of which had been identified, for many years, with the retail sale of liquor. He promised me to have a meeting of his committee for the consideration of the bill, at which I would have the opportunity of being heard, but somehow there never was any such meeting.

During all of these years, I have, upon all proper occasions, urged this legislation, and I believe there is an increasing sentiment in its favor, but as the state senate will be the same at the next session of the legislature, there is not much hope of early success.

The arguments against what I wanted urged during the legislature were varied and intended to excite the opposition of men of entirely different views. As the commissioners were to be appointed by the governor, with the concurrence of the senate, it was urged upon those members who were not of the same party as the governor, that it would enable him to build up a great political machine which would have its active and influential agents in every place in the state where liquor might be sold, although the senate and the governor do not belong to the same political party. Other people set up a cry that it would be in violation of principles of local home rule, and that each county and municipality should be left free to manage its own affairs. The prohibitionists were solidly opposed to anything of the sort, although they did not openly say so. The liquor interests, without appearing on the surface, quietly exerted influence against any such legislation, and appear to have been effective.

I would like very much to know from other states whether similar efforts have been attended by the same delay, difficulty, and lack of success, for a time at least, as have been ours in New Mexico. The saloon conditions in New Mexico are not worse than they generally are in other states, and I am sure that they are much better than in some jurisdictions of greater population and wealth.

I submit for the consideration of those who believe in regulation, the following as a list of things essential to regulative legislation:—

Central state control, although this may be offensive to public sentiment in states with very large cities like New York, Chicago, or Philadelphia;

Salaried state officers;

Licenses classified and graded in amount by occupations, and by population;

Authority to municipalities to impose additional license tax;

Number limited on population basis;

No license to unfit persons;

Bonds from licensees for good behavior;

Summary revocation for cause, on hearing;

Saloons to have entrance from public highway with doors and windows so arranged as to give public view of place where liquor is sold, and to be on ground floor;

Licenses transferable only with consent of state commission;

No sale to minors, intoxicated persons, or drunkards;

Fixing of hours for business;

No sales on election days;

No adulteration of liquor;

No serving of liquor by women, minors, or persons convicted of felony;

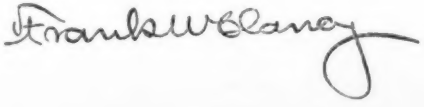
No license for saloon for use in connection with grocery or other store;

No license for any house of prostitution or for premises adjacent;

No inclosed stalls, wine rooms, or other like places;

No saloon license to brewing companies or wholesale liquor dealers.

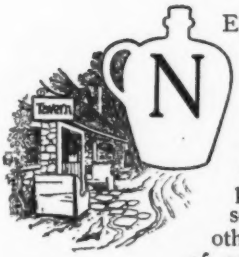
Such a system would be self-sustaining and revenue producing, would lessen police expense, and would greatly diminish the recognized evils of the business with its accompanying disorder and crime, and could be enforced.



Soliciting Orders for Intoxicating Liquors

BY A. G. BAILEY

District Attorney, Yolo County, California.



NEARLY all local option laws that have ever been passed in the United States have a section in them prohibiting, in some form or another, the soliciting of orders for intoxicating liquors within the limits of dry or no-license territory. It was early found that the sections prohibiting sale, gift, and barter of intoxicating liquors were not sufficient, standing alone. The sections prohibiting soliciting of orders were thereupon added.

Like every other law pertaining to alcoholic liquors, these sections were early subjected to attacks on their constitutionality, both in regard to the various state Constitutions and as being in conflict with the Federal Constitution.

Nearly all of the cases, both of the early and the late cases, have held that such sections were constitutional under various state Constitutions, but under practically all of the early decisions it was held that these sections were unconstitutional when applied to persons residing out of the state or to the soliciting of orders between the states. Among the earliest cases passing on this question are a couple of cases from New Hampshire: Dunbar v. Locke, 62 N. H. 442; Jones v. Surprise, 64 N. H. 243, 9 Atl. 384. These cases held that there was no conflict between the soliciting statute and the Federal Constitution; however, both cases were overruled at a later time in the case of Durkee v. Moses, 67 N. H. 115, 23 Atl. 793. Practically all of these cases arose before the passage of the Wilson act, 26 Stat. at L. p. 313, chap. 728, U. S. Comp. Stat. 1901, pp. 31, 77. Among the older cases holding that such sections were unconstitutional as being in conflict with the interstate commerce clause of the Federal Constitution are the following: Walling v. Michigan, 116 U. S. 446, 29 L. ed. 691, 6 Sup. Ct. Rep. 454; Re Bergen, 115 Fed. 339; Ex parte Loeb, 72 Fed. 657; Carstairs v. O'Donnell, 154 Mass. 357, 28 N. E. 271; Durkee v. Moses, 67 N. H. 115, 23 Atl. 793; Corbin v. McConnell, 71 N. H. 350, 52 Atl. 447; State v. Lichenstein, 44 W. Va. 99, 28 S. E. 753; Sloman v. William D. C. Moebs Co. 139 Mich. 334, 102 N. W. 854; State v. Hickox, 64 Kan. 650, 68 Pac. 35; State v. Hanaphy, 117 Iowa, 15, 90 N. W. 601; State v. Bernstein, 129 Iowa, 520, 105 N. W. 1015; Moog v. State, 145 Ala. 75, 41 So. 166; Ex parte Massey, 49 Tex. Crim. Rep. 60, 122 Am. St. Rep. 784, 92 S. W. 1086; R. M. Rose Co. v. State, 133 Ga. 360, 65 S. E. 770, 36 L.R.A.(N.S.) 443. All of these cases except R. M. Rose Co. v. State were decided before the decision of the United States Supreme Court in the case of Delamater v. South Dakota, 205 U. S. 93, 51 L. ed. 724, 27 Sup. Ct. Rep. 447, 10 Ann. Cas. 733. The Moog Case was decided after the ruling in the Delamater Case, but evidently the ruling in that case was never called to the attention of the court. In this case a resident of Florida was arrested for soliciting orders in the state of Alabama. The court held that the statute prohibiting the soliciting of orders in dry territory in Alabama did not apply to the defendant, inasmuch as he and his principal were engaged in interstate commerce. The ruling appears to be in

conflict with the ruling in the Delamater Case and all the subsequent cases; however, the court held that the section was constitutional and binding against parties residing within the state of Alabama, and that the section was unconstitutional only in so far as it attempted to restrain interstate commerce.

In R. M. Rose Co. v. State, 133 Ga. 360, 65 S. E. 770, 36 L.R.A.(N.S.) 443, the supreme court of Georgia held that persons residing outside of the state of Georgia, and soliciting orders within the dry portions of Georgia by means of the United States mail, were not liable under the Georgia statute prohibiting the soliciting of orders. It was held in this case that the law of Georgia did not apply to a person outside of the state of Georgia. This case has been criticized by the courts of other states,—notably in the case of State v. Holmes, 68 Wash. 7, 122 Pac. 345. The court did not hold that the section was unconstitutional, merely that it did not apply to a defendant outside of the state of Georgia. This ruling was in direct conflict with the ruling of the Georgia appellate court in Rose v. State, 4 Ga. App. 588, 62 S. E. 117. The appellate court held that the section of the Georgia Code prohibited the soliciting or taking of orders in the state of Georgia, and that it applied to persons living outside of the state and soliciting by mail. This case approves and follows the ruling in the Delamater Case.

The only case holding that a section of this kind is unconstitutional, both within and without the state, on the ground that it is an improper interference with interstate commerce, is the case of Ex parte Massey, cited above. This case held that a section of the Texas law prohibiting the soliciting of orders for the sale of intoxicating liquors in local option territory was unconstitutional, and an improper interference and in restraint of trade under the interstate commerce clause. The court held that the entire section was void. This case was decided after the Delamater Case, but the Delamater Case was not reviewed or cited to the court. The opinion is concurred in by only two justices, and Brooks, J., dissented.

The Delamater Case, to which reference is made in consideration of these early cases, was a case arising under a statute of South Dakota prohibiting the soliciting of orders for intoxicating liquors by any person not having a license to do so. Delamater was convicted in South Dakota of soliciting orders without a license. He was a resident of another state. His firm or principal was a resident of another state, and any orders that he received were delivered to a common carrier in the foreign state. The supreme court of South Dakota held that he was liable for punishment, and that under the Wilson law the section was not unconstitutional as being in restraint of trade or against interstate commerce. The case was appealed to the United States Supreme Court, and the contention of the supreme court of South Dakota was sustained, the court holding that it was a proper police measure and that the statute was constitutional, and not repugnant to the interstate commerce clause. This is the leading case on this question. All of the later cases, except Rose v. State, have followed the ruling in the Delamater Case.

In McCollum v. McConaughy, 141 Iowa, 173, 119 N. W. 539, the Iowa supreme court distinctly overruled the former rulings of the supreme court of that state, in State v. Hanaphy, 117 Iowa, 15, 90 N. W. 601, and State v. Bernstein, 129 Iowa, 520, 105 N. W. 1015, and followed the ruling of the Delamater Case. This case was an injunction case, and the defendant was an agent of a Kentucky corporation, the orders being filled and delivered in Kentucky. The court held that the injunction was not a proper proceeding, but that a criminal proceeding would lie, and that the sections of the Iowa law were constitutional and valid.

One of the earlier cases upholding the constitutionality of such laws is the case of the People v. Swenson, 162 Mich. 397, 127 N. W. 302, which, after citing the Delamater Case, held that the defendant was liable although the orders were to be delivered outside the state. This case in fact overrules the case of Sloman v. William D. C. Moebs Co., heretofore cited.

In State v. Davis, 84 S. C. 516, 66 S. E. 875, the defendant was a liquor drummer, and solicited orders for his principal, a resident of Virginia. Under a statute making it unlawful to conduct the business of liquor drumming or receiving orders, the defendant was held accountable. The Delamater Case was followed, and that court held that the statute did not interfere with interstate commerce.

In State v. Miller, 66 W. Va. 438, 66 S. E. 522, 19 Ann. Cas. 604, the defendant, an agent of a Maryland corporation, was held liable under a statute prohibiting nonresidents from soliciting in West Virginia without a license. The court follows the Delamater Case, and practically overrules State v. Lichenstein, heretofore cited, saying that at that time the court did not know of the existence of the Wilson act.

In the cases of Crigler v. Shepler, 79 Kan. 834, 101 Pac. 619, 23 L.R.A. (N.S.) 500, and in State ex rel. Jackson v. William J. Lemp Brewing Co. 79 Kan. 712, 102 Pac. 504, 29 L.R.A.(N.S.) 48, the Kansas supreme court followed the ruling in the Delamater Case and overruled the former ruling of the Kansas supreme court in State v. Hickox, 64 Kan. 650, 68 Pac. 35.

Among other cases following the Delamater Case and holding that sections prohibiting soliciting of orders are not in conflict with the Federal or state Constitutions, are the following cases: Hart v. State, 87 Miss. 171, 112 Am. St. Rep. 437, 39 So. 523; People v. McBride, 234 Ill. 146, 123 Am. St. Rep. 82, 84 N. E. 865, 14 Ann. Cas. 994; Hayner v. State, 83 Ohio St. 194, 93 N. E. 900; State v. Holmes, 68 Wash. 7, 122 Pac. 345; Stevens v. State, 61 Ohio St. 597, 56 N. E. 478; Williams v. State, 5 Okla. Crim. Rep. 208, 114 Pac. 624.

In Kirkpatrick v. State, 138 Ga. 795, 76 S. E. 53, a Georgia case later than R. M. Rose Co. v. State, it was held that under the Georgia statute an agent of a nonresident is liable. The court approves the Delamater Case, and distinguishes R. M. Rose Co. v. State, heretofore cited. The court also says that the current of authority at the date of that decision is to the effect that laws of this kind are constitutional, and do not interfere with interstate commerce. One of the earliest cases on this point is the case of Lang v. Lynch, 38 Fed. 489, 4 L.R.A. 831, where the court decided in 1889 that a statute of New Hampshire prohibiting soliciting orders was constitutional, and not in restraint of commerce.

Stevens v. State, 61 Ohio St. 597, 56 N. E. 478, is another case following the ruling in the Delamater Case; also State v. Hanner, 143 N. C. 632, 57 S. E. 154, 24 L.R.A.(N.S.) 11.

The appellate court of the state of California, in the case of Ex parte Anixter, — Cal. App. —, 134 Pac. 193, held that a town ordinance of the town of Winters, in California, was constitutional, and approved the ruling in the Delamater Case. This case is now in the supreme court of California, and will be decided in a short time.

An ordinance of the town of Windsor, in Colorado, prohibiting the soliciting of orders, was held a proper exercise of the police power by the supreme court of Colorado in the case of Brunstein v. People, 47 Colo. 10, 105 Pac. 857. Another case is before the district court of appeals in California, on the same grounds. This is the case of Golden & Co. v. Justice's Ct. and will be decided at an early date.

It has also been held that statutes prohibiting the advertising of alcoholic liquors, either by circular or in newspapers, are constitutional. State v. J. P. Bass Pub. Co. 104 Me. 294, 71 Atl. 894, 20 L.R.A.(N.S.) 496; Zinn v. State, 88 Ark. 273, 114 S. W. 227; State ex rel. West v. State Capital Co. 24 Okla. 260, 103 Pac. 1021.

In the case of Carter v. State, 81 Ark. 37, 98 S. W. 704, the court held that advertising was not soliciting, and that the statute, as it existed then, did not apply to advertising. The validity of the section was not questioned.

In Zinn v. State the section had been amended to include advertising, and the section was held to be constitutional, and not in interference with the power of Congress to establish postoffices and post roads.

In State v. Ascher, 54 Conn. 299, 7 Atl. 822, 1886, the court held that an agent was liable who took orders and sent them to his principal out of the state.

It has been held that such statutes prohibit the soliciting of orders by mail, and that the jurisdiction is in the place where the letter is received. Rose v. State, 4 Ga. App. 588, 62 S. E. 117; State v. Holmes, 68 Wash. 7, 122 Pac. 345; Hayner v. State, 83 Ohio St. 178, 93 N. E. 900; Danciger v. Stone, 187 Fed. 861.

The case of United States v. Thayer, 209 U. S. 39, 52 L. ed. 673, 28 Sup. Ct. Rep. 426, is an instructive case on jurisdiction where the crime is one of soliciting by mail. This is not a liquor case, but is a case that is very applicable to liquor cases. The question of soliciting orders by mail is before the California appellate court in the case of Golden & Co. v. Justice's Ct. as heretofore stated.

One who sent his agent into a territory to solicit orders is guilty of violating the statute of the territory, prohibiting the soliciting of orders. Taylor v. United States, 6 Ind. Terr. 350, 98 S. W. 123.

Such statutes do not prohibit acceptance of orders where there is no solicitation. Sandefur-Julian Co. v. State, 72 Ark. 11, 77 S. W. 599.

It has also been held that it is not necessary that the liquors be shipped or that an order be received. Levy v. State, 133 Ala. 190, 31 So. 805.

It has also been held that such sections apply to a single solicitation. Mills v. State, 148 Ala. 633, 42 So. 816.

In the case of State v. Wheat, 48 W. Va. 259, 37 S. E. 544, requiring a license to solicit in dry territory, it was held that one holding a license in wet territory was protected while soliciting in dry territory. There was no constitutional question involved in this case, and in fact the case is of very little use.

It will thus be seen that, since the ruling of the Delamater Case, almost without exception, statutes of this character have been held constitutional, and that, like all other sections of the liquor laws, the courts are endeavoring to give effect to such laws.

Conflict of Powers

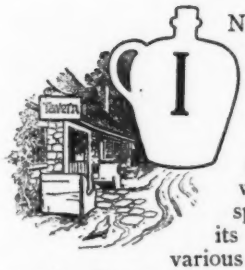
I believe, when the police power of the State and the commerce power of Congress come in collision in that narrow field where sometimes it is difficult to determine whether one falls under the police power or under the commerce power, that it is a part of wisdom on the part of Congress to concede the power of the State or remove the impediment to the exercise of the police power of the State, especially when the State says that laws it has enacted in the interest of public health and public morals are being violated by the protection afforded by the commerce clause of the Constitution.—Hon. Henry D. Clayton.

Relation of Federal and State Governments to Liquor Traffic and Regulation of Same

BY WILLIAM H. HIRSH

of the New York Bar

Solicitor for the New York State Brewers' Association.



IN the United States we have a dual form of government, consisting of a Federal scheme and revolving within this larger sphere, each on its own axis, the various state governments. It was the theory of the framers of the Constitution and those who insisted upon the first ten amendments for a more complete protection of the reserved rights of the states, that each system was sufficiently balanced against the other to maintain the sovereignty lodged in the government of the Union and that remaining in the states accordingly, as specific powers were delegated to the Federal government, denied to the states, or reserved by the states. It was not intended or supposed that the Constitution should stand as adamant, and withstand all changes that the ages should evolve, nor was it put forth as a perfect instrument adapted to all vicissitudes of government, present and future. It was destined to suffer modification, either through amendment or interpretation, to suit imperative demands. Phraseology was necessarily indefinite in many respects, and national development inevitably and unavoidably created doubtful grounds of jurisdiction which beclouded the line of demarcation between the state and Federal authority. Encroachment on these doubtful grounds by the Federal government are admitted by publicists as facts both actually accomplished and still threatened, and exercise of questionable powers has been and will continue to be resisted by the states; and yet, through over one hundred years of phenomenal growth and development, there are certain plain prerogatives about which there has been and can be no dispute, but which are recognized as belonging to the state government and certain others to the Federal government. In neither instance has there ever been any indication of, or warrant for, any trespass or curtailment. Of these prerogatives we cite and especially refer to the police power, which is exclusively left to the state within its own limits, and the regulation of interstate commerce, which is unequivocally delegated to Congress.

From the aim of our government, both national and state, from the theory of our Federal Constitution and the intent of its framers, from the motive which inspired the first ten amendments and the interpretation of its provisions through a century of momentous changes, and from the mandates of both the explicit division of privilege with respect to police power and interstate commerce between state and Federal sovereignty, and the lessons of long experience in the exercise of these privileges by the appointed and indicated sovereignties, we believe it follows:

(1) That the police power does not lie in the twilight zone of doubtful jurisdiction, but is clearly and unquestionably lodged in the separate states, and denied to the national government, and should remain in the states.

(2) That the regulation of the sale of alcoholic drinks within a state falls under and is subject to this police power, and belongs to the state absolutely, and cannot be undertaken or interfered with by the national government in any manner, except in so far as an article of interstate commerce comes under the protection of the Federal government.

(3) That there can be no legislation by Congress with respect to the sale of alcoholic drinks within the states.

(4) That any system of government

which provides for legislation by Congress for the regulation of the sale of alcoholic drinks in the states would be in violation of the fundamental principles of the relation of the Federal government to the state governments, and would encroach upon the police power, which was one of the rights and prerogatives plainly and indisputably reserved to the states and always exercised by them, and would constitute a dangerous precedent for further absorption by the national government of powers which essentially go to make up state sovereignty.

(5) That liquor in packages constitutes and has always been considered a legitimate article of commerce, and as such enjoys all the rights and protection afforded by the Federal government in the exercise of its control of interstate commerce.

When we come to consider the regulation of the liquor traffic by the states themselves, it is submitted that laws for that purpose should be broad and general, and not clothe any person or group of persons with discretionary powers of governing society. It seems to be demonstrated that the states have ample power and resources to protect themselves in this way. The laws of New York state follow out that principle.

On the 23d of March, 1896, the present liquor tax law of the state of New York was put upon the statute books as the result of a careful study of the situation and problems presented by the liquor traffic. It was not enacted for the purpose of conferring any special privileges or favor upon those engaged in the traffic, nor was it conceived for the purpose of pursuing Utopian dreams or fanciful panaceas. The law sought to put the liquor traffic upon a legitimate and sound economic basis, and classified those who were engaged in it as purveyors of food and drink to the public. It sought to protect the investments in such business, and also vested with the public a certain right in connection with it that was calculated to conserve the general welfare. Although, from year to year, some modification has been made in this statute, in substance and principle it has remained the same and may be said to give general satisfaction.

The liquor traffic in the state of New York is regulated by a general state law which is uniform throughout the entire state, except in a few instances, such as the amount of tax levied, the hours for closing, and provisions for local option in less densely populated sections known as towns. The law is administered by a state department, which consists of a commissioner and deputies, and also a special deputy commissioner or certificate issuing officer in various parts of the state, all of whom are subject to the authority and direction of the state excise commissioner.

The right to engage in the liquor traffic is not dependent upon the discretion of the department, but is given by the law absolutely, provided certain conditions and requirements are complied with. . . .

There is this to be said in conclusion. The authorities consider the existing law as ample and sufficient to protect society and the state. It has placed the liquor traffic on a fixed basis, and holds it up to a certain standard. It limits the number of licenses which may be granted in a city, town, or village, and it prevents the establishment of a liquor tax certificate within prescribed distances from schools or residences or churches, without certain consents, and provides for forfeiture if the privilege is abused after consent is obtained. No neighborhood need tolerate an objectionable or disorderly place. Its residents may secure certain and sure redress through its fixed and rigid provisions. There is no uncertainty about its requirements; and industrial, political, and social peace is preserved in the community by a sensible system of governmental regulation.

William H. Hirsh.

Editorial Comment

The mind's the standard of the man.—Watts.

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Intoxication as a Defense as against Bona fide Holder of Note

THERE is, perhaps, no class of decisions of greater interest or importance to the business community than those which relate to the validity of commercial paper, and especially its validity in the hands of an indorsee in good faith and for value. Additional interest attaches to a recent decision of the Wisconsin supreme court, Green v. Gunsten, — Wis. —, 46 L.R.A.(N.S.) —, 142 N. W. 261, that a note signed by a maker when so intoxicated as to destroy the faculties of his mind cannot be enforced by a bona fide holder in due course, by reason of the fact that it is the first instance of an application of the provisions of the negotiable instruments law to such a situation. This decision is put upon the ground that the case falls within the exception made in that provision of the negotiable instruments act which states the rights of holders in due course, of cases where the title of the person negotiating the instrument is void under another provision, which declares the title of such person to be "absolutely void when such instrument or signature was so procured from a person who did not know the nature of the instrument, and could not have obtained such knowledge by the use of ordinary care." And it is further held that a person so completely intoxicated as to be temporarily deprived of reason or understanding cannot be said to have failed to use ordinary care within the meaning of the provision above quoted, as in such condition he was incapable of exercising any care whatever. "Nor," says the court, "can it be held that he should have exercised care not to get drunk, for, as before observed, the signing the notes is not the usual or probable result of drunkenness."

The question whether total intoxication is a defense as against a bona fide holder is one upon which the courts have differed. In a Connecticut case, Caulkins v. Fry, 35 Conn. 170, it has been held that if the maker of a note was so intoxicated at the time as utterly to be deprived of the use of his reason and understanding, the note is void, and therefore unenforceable even in the hands of a bona fide holder. The defense of intoxication in such case, says the court, goes to the essence of the contract; whereas if the maker's intoxication was only such as enabled the payee to take advantage of

him, the note is voidable only, and the intoxication is a defense only as against the payee or an indorsee with notice.

A contrary view has been taken in Pennsylvania (State Bank v. McCoy, 69 Pa. 204, 8 Am. Rep. 246; McSparran v. Neely, 91 Pa. 18,[1] and Utah (Smith v. Williamson, 8 Utah, 219, 30 Pac. 753). This rests on the authority of State Bank v. McCoy, 69 Pa. 204, 8 Am. Rep. 246, in which it was found by the jury that the defendant received no consideration for the note, and that he was so intoxicated at the time he signed it as to be wholly unconscious of what he was doing. The court, after stating that the total drunkenness of the maker when he executed the note, if known to the payee, rendered it void as to the latter, went on to say: "But if the drunkenness of the maker, when known to the payee and taken advantage of by him, or when so complete as to suspend the use of the reason and understanding, renders the note void in the hands of the payee, the question recurs whether it avoids it in the hands of an indorsee for value without notice of the maker's condition when he gave the note and of the fraudulent circumstances under which it was obtained. There is no case which so decides. But it is contended that drunkenness is a species of insanity, and, therefore, a contract made by one when in such a state of drunkenness as not to know what he was doing should, like the contract of an insane person, be regarded as absolutely void. But the contract of an insane man is not, under all circumstances, an absolute nullity. As was said in La Rue v. Gilkyson, 4 Pa. 375, 45 Am. Dec. 700, an insane man, like an infant, is liable on his executed contract for necessaries; and it was more than intimated in Beals v. See, 10 Pa. 56, 49 Am. Dec. 573, that he would be liable for merchandise innocently furnished to his order by a person unapprised of his infirmity. But if, as ruled by Lord Tenterden, Ch. J., at nisi prius, in Sentance v. Poole, 3 Car. & P. 1, the note of an insane person, or of one perfectly imbecile, which he has been induced to sign by fraud and imposition, is void in the hands of an innocent indorsee, it does not follow that a note given by a person in a state of intoxication is void in the hands of a holder for value, without notice of the maker's condition when it was given. There is this difference between the cases. Insanity or total imbecility is a permanent state or condition of the mind, disabling one from taking care of himself. Drunkenness is a temporary disability, voluntarily produced. Insanity is a misfortune,—drunkenness is a vice. No man voluntarily does an act necessarily producing madness in order that he may become insane. But men drink in order that they may get drunk. And when they thus temporarily deprive themselves of the use of their reason, and voluntarily expose themselves to fraud and imposition, the law may wisely refuse to treat them with the same tenderness that it does those unfortunate beings who are deprived of their understanding, by some Providential dispensation; and it may properly hold them to a different measure of responsibility for the consequences of their acts. If a man voluntarily deprives himself of the use of his reason by strong drink, why should he not be responsible to an innocent party for the acts which he performs when in that condition? It seems to me that he ought on the principle that where a loss must be borne by one of two innocent persons, it shall be by him who occasioned it. As between the contracting parties, where one of them is so drunk as not to know what he is doing, the contract is doubtless void, especially if the other is apprised of his condition, and, if not wilfully or culpably blind, he must know it. As was said by Parke, B., in the case already quoted: 'A person who takes an obligation from another under such circumstances is guilty of actual fraud.' But if there is nothing to give notice of the intoxication, or to put one upon inquiry, as, where a contract is made by letter or message sent by post or telegraph, and is executed in good faith by the party receiving the order, if the other party should refuse to per-

[1] See also dicta in Abbeville Trading Co. v. Butler, 3 Ga. App. 138, 59 S. E. 450; Miller v. Finley, 26 Mich. 249, 12 Am. Rep. 306; Benton v. Sikyta, 84 Neb. 808, 24 L.R.A. (N.S.) 1057, 122 N. W. 61.

form the contract on the ground that he was totally drunk when he sent the order or entered into the contract, it is clear that, on the principle already stated, the defense ought not to avail. Why, then, should the maker of a note be allowed to set up against an innocent holder the defense of drunkenness? But there is another and controlling reason for holding the maker liable to the indorsee in such case, founded on principles of public policy and the necessities of commerce. The exigencies of trade require that there should be no unnecessary impediments to the ready circulation and currency of negotiable paper, but that it should be left free to pass from hand to hand like bank notes, and perform the functions of money, untrammeled by any equities or defenses between the original parties. If, then, it should be held that the drunkenness of the maker avoids his note in the hands of the indorsee, it is obvious that such a rule would greatly clog and embarrass the circulation of commercial paper; for no man could safely take it, without ascertaining the condition of the maker or drawer when it was given, although there might be nothing suspicious in its appearance or unusual in the character of the signature. It is evident that it would be a less evil to exclude the defense of drunkenness, though it might occasionally work individual hardship, than to clog the circulation of commercial paper, to the great inconvenience of the public, by admitting such a defense. If fraud and imposition in obtaining a note will not avoid it in the hands of an innocent indorsee—because such a rule would render commercial paper less valuable and convenient as a medium of exchange—why should the drunkenness of the maker? Why should drunkenness be a defense, if there has been no fraud or imposition? And if there has, and this is the ground of the defense, why should it not avoid the note in the one case as well as in the other?"

This reasoning, as will be perceived, involves three propositions: (1) That the note of an intoxicated person, even where he was so drunk as not to know what he was doing, is at most only voidable; (2) that his deprivation of understanding being due to his own voluntary act, the principle applies that where a loss must be borne by one of two innocent persons it should be borne by the one whose fault contributed to it; (3) that considerations of public policy demand that the circulation of commercial paper shall not be clogged or embarrassed by the possibility of a latent defense thereto.

With regard to the first of these propositions, it is submitted that it fails properly to distinguish between the effect upon a contract of different degrees of intoxication of a party thereto. Although it may be practically impossible to say just when one stage of intoxication ends and another begins, intoxication may, for present purposes, be considered as divisible into three stages. The first stage is where the drinker is "elevated, but not inebriated." His faculties are for the moment keener and his logic swifter, than in an unstimulated condition. Any contract entered into by him at this stage will be neither void or voidable. At the second stage the drinker is, in the vernacular of the street, not exactly soused, but damp around the edges. He retains his capacity to contract, but is liable to be imposed upon, so that a contract entered into by him may be voidable by reason of the fraud of the other party. Here his intoxication is simply a circumstance tending to show that he was imposed upon; and, as in other cases where a note is obtained by fraud, it will be enforceable by a bona fide holder. At the third stage, the drinker's normal personality is completely submerged. Able to move or speak, he is nevertheless virtually an automaton. Dr. Jekyll has been driven out, and Mr. Hyde is in possession. The power to contract is wanting, for a meeting of the minds has become impossible. That a note made under such conditions is not merely voidable, but void, and therefore unenforceable either by a payee or by a bona fide holder, is recognized in the Wisconsin and Connecticut cases.[2] The Pennsylvania

[2] See also Berkley v. Cannon, 4 Rich. L. 136, which holds that a note executed when the maker was too drunk to know what he was doing is wholly void, and therefore incapable of ratification by his subsequent conduct.

and Utah courts, on the other hand, treat such a note exactly as if it had been made at the second stage, and so arrive at the conclusion that it is voidable only.

To the contention that the situation is one for the application of the rule that where one of two innocent persons must suffer loss, the loss should be borne by him whose conduct has made it possible, the apt rejoinder, made by the court in the Wisconsin case, is that, as in every case the drunken maker has been taken advantage of by a designing payee or third party, it is not correct to say that the fault is that of the maker alone; and that the signing of notes is not the usual or probable effect of drunkenness. Furthermore, the law should concern itself with the legal consequences of his admitted incapacity to contract, and not with the ethical aspect of his conduct.

As to whether considerations of public policy require that total intoxication shall not be admitted as a defense against a bona fide holder, there is, of course, room for a difference of opinion. But the same considerations would preclude the defense of insanity, which the courts admit.[3] Besides, instances where a note is procured from a person so intoxicated as to be bereft of understanding must be extremely rare; and the infrequency with which the courts have been asked to pass upon the validity of this defense indicates that its possibility would form no appreciable impediment to the free circulation of commercial paper.

But the applicability of the second and third of the foregoing propositions obviously depends upon the correctness of the first; for if it is once admitted that the note is void, neither equitable principles nor considerations of public policy can galvanize it into being. In dealing with the fact of incapacity and its consequences, it is not logical to make its cause a basis of distinction. The reasoning of the Wisconsin court, therefore, appears to be sounder than that of the Pennsylvania case and the decisions which follow it.

EDWIN S. OAKES.

[3] "The protection of persons who are so unfortunate as to be bereft of reason and incapable of managing their own estates is of higher obligation ,and an object more to be cherished by the courts, than is the protection of holders of commercial paper, however innocent they may be." Dickerson v. Davis, 111 Ind. 433, 12 N. E. 145.

Overcome Evil with Good

Drunkenness ruins more homes and wrecks more lives than war. How shall we oppose it? I do not say that we shall not pass resolutions and make laws against it. But I do say that we can never really conquer the evil in this way. The stronghold of intemperance lies in the vacancy and despair of men's minds. The way to attack it is to make the sober life beautiful and happy and full of interest. Teach your boys how to work, how to read, how to play, you fathers, before you send them to college, if you want to guard them against the temptations of strong drink and the many shames and sorrows that go with it. Make the life of your community cheerful and pleasant and interesting, you reformers, provide them with recreation which will not harm them, if you want to take away the power of the gilded saloon and the grimy boozing-den. Parks and playgrounds, libraries and music rooms, clean homes and cheerful churches,—these are the efficient foes of intemperance.—Henry Van Dyke.

Origin of Romantic Will.

Editor CASE AND COMMENT:

In your October issue, volume 20, No. 5, on page 350, you print the will of Charles Lounsbury, and state that the same Lounsbury died insane in Cook county, after having made that will. I have "Ancient, Curious, and Famous Wills," by Virgil M. Harris; on page 207 of the book, he copies the same will, and says that it is a fanciful creation of Mr. Williston Fish, a prominent attorney of Chicago, Illinois. I just want to call your attention to this fact and have the matter settled. Either you are right, or Mr. Harris is wrong as to the author of the will. It is in fact the most remarkable will ever written, encouched in the purest language.

CHARLES H. PETERS.

Knox, Ind.

On receipt of Mr. Peters' letter, we submitted the question of the authorship of this remarkable will to Mr. Virgil M. Harris, author of the valuable and entertaining work on "Ancient, Curious, and Famous Wills,"- which, by the way, has just been republished in England, where it has had a very favorable reception.

Mr. Harris kindly sent us the following statement:

Editor CASE AND COMMENT:

I am duly in receipt of your letter of October 8th with reference to the will alleged to have been written by an insane lawyer confined in an asylum in Cook county, Illinois.

Some years ago, when preparing my book, "Ancient, Curious, and Famous Wills," I took the pains to investigate the origin of this prose poem, which has become a classic not only in America, but abroad. Until that time, I supposed that it was really, as it purported to be, the work of an insane man.

After several months' investigation, I found that this was an error. It was a deliberate literary composition by Mr. Williston Fish, who until recently, was practising law in Chicago.

The will first appeared in the year 1898 in "Harper's Weekly." It is purely a fanciful creation, and was reproduced in my work by express permission of Messrs. Harper & Brothers. The only condition which they attached to its reproduction, was that I should call it "A Last Will," instead of "An Insane Man's Will."

A few years ago, at Christmas time, there appeared an editorial in "Harper's Weekly" on this will, in which the editors explained its history, and stated that it was to be regretted that Mr. Fish had omitted Christmas and its attendant joyousness among the dispositions made by the will. I thought this rather a happy suggestion.

Sometime ago, Mr. Fish himself wrote a lengthy article for "Harper's Weekly," in which he gave a history of the will, how he came to write it, and many other facts of a very interesting nature with reference to the inquiries that had been made regarding it and the alterations which various editors had seen fit to make in it.

While visiting the Island of Bermuda, sometime ago, I noticed the will in a local paper. I happened to meet the editor a few days afterward and explained to him the origin of it. He was much gratified, and in the next issue of his paper outlined the true history of the will.

Even in England, the will has taken a firm hold in literary circles. In a book written in London quite recently on the Romance of Wills, a portion of this unique will was reproduced, and in a footnote the author stated that it had been supposed in England, until my explanation of its history, that the will was a genuine production.

The will has had a very unusual course in literary channels, and has probably been reproduced as often in newspapers and magazines as any article in recent years.

The will, as you give it, is not exactly in the words of the original, for, as Mr. Fish says, many editors have attempted to embellish it. I must myself plead guilty in this regard, for I give you below an item which I prepared:

"Item: I give and bequeath to girls all beauty and gentleness; and to them I give the crown of purity and innocence which is theirs

by right of birth and sex; and also in due season the abiding love of brave and generous husbands, and the Divine trust of motherhood."

I trust the foregoing explanation will be of some service to you.

VIRGIL M. HARRIS.

St. Louis, Mo.

The First Conference of Judges.

Editor CASE AND COMMENT:

In your October issue (p. 336) you comment upon the "conference of judges," composed of forty-eight chief justices of the several states and nine presiding circuit judges of the United States circuit courts of appeals, held at Montreal in connection with the American Bar Association, as "the first 'conference of judges' ever held in the history of the United States." You were eminently correct in saying, "It was admittedly one of the most unique and distinguished audiences ever assembled," but you were in error in saying that it was the first of its kind. Of course you were not advertent to the fact, but the "conference of Mississippi judges," composed of the supreme and circuit court judges and the chancellors of the state, had met and organized on August 15, 1913, a short while before the organization of the Montreal conference, and wholly without any knowledge of the purpose of those distinguished members of the judiciary to effect that organization.

The conference of Mississippi judges was organized for the purpose of reforming our local judicial procedure to the end that the administration of justice by the courts might be less expensive, more speedy and effective. The judges were divided into several appropriate committees to prepare proposed legislation to carry the purposes of the conference into effect, and will meet again with the assembling of the legislature next January.

Having thus established the seniority of the Mississippi conference, we may all feel gratified by such evidences of a universal purpose on the part of the judiciary and the profession everywhere to reform the judicial procedure throughout the country.

MONROE MCCLURG.

(Judge Fourth Circuit Court District.)

Greenwood, Miss.

Public Ownership in San Francisco.

ED. NOTE.—We present herewith a short statement by Honorable Russell L. Dunn, concerning industries under municipal control in San Francisco. His article in the November CASE AND COMMENT on the "Incompatibility of the Public Ownership Function with American Republican Government" attracted wide attention. His views are based upon an intimate knowledge of the situation.

Editor CASE AND COMMENT:

The public ownership of my own city is no worse than public ownership of the same kind in other cities, except that we have more of it. It is with regret that I admit that I can say nothing good of it.

For instance, consider the Geary street municipal road. Including interest loss awaiting completion, it has cost $2,000,000. A private company would have built an equally good roadbed and very much better cars for not more than $1,350,000,—you can depend on the substantial accuracy of my estimate. You see it was the impersonal money of the people which public officers spent. The operation of the road costs fully 25 per cent more than its operation by a private company. The city gets a profit, because the road occupies the best traffic-producing street in the city outside of Market street. The profit, however, cannot be regarded as anything more than the rent of the use of the street, and I believe that a private company would give that profit as rent and take its chances of making a surplus profit.

The profit goes into the municipal treasury. The taxpayers who pay taxes on real estate, etc., get the benefit of the profit, whatever it may be. The people who pay a capitation poll tax get none of it, though they own the street and I am quite sure that they pay the fares which produce the profit.

Another, for instance: The city has undertaken the municipal ownership of the garbage destruction business. It has expended already nearly $1,250,000 for investment, without having completed the destructor works. The one plant it has in operation makes the cost of destruction of garbage over $1.25 per ton. The private company doing the business which the city took over had not more than $150,000 invested. It was under contract with the city to destroy the garbage for the price of 60 cents per ton. The economic waste of handling the garbage of a city is in the collection of the garbage. Where nothing could have been saved from the cost of its destruction, easily $250,000 annually could be saved in the collection of it. The city government was informed of this, but has "forgotten." Instead, it assisted the garbage men, scavengers, to raise the price of collection fully $250,000 annually.

Another instance: The city has undertaken a high-pressure fire protection system. On this is expended $5,750,000 of impersonal money. A private corporation would have made a better job of it with fully $2,000,000 less expenditure. It built a pumping station in which the machinery is so designed, that five times the boiler capacity was installed than would have been necessary with the proper design.

Still another instance: The city has undertaken to acquire a municipal water supply. It has expended $2,000,000 for nothing more substantial than "conversation." The city officers have been engaged for twelve years in controversies with officers of other public ownerships, and have not yet obtained the right to use the water, which under "the law" the city is entitled to take without asking anybody's permission.

I could enlarge on this indefinitely.

RUSSELL L. DUNN.

San Francisco, Cal.

Among the New Decisions

While the courts should temper the rigor of the established rule when it seems harsh, yet radical changes should be left to legislative enactment.—Hon. Harry Higbee.

Animal — turkey — injury by dog. The first decision as to what are animals within the statute in relation to the killing of animals by dogs is the Michigan case of Holcomb v. Van Zylen, 140 N. W. 521, 44 L.R.A.(N.S.) 607, which holds that a turkey is an animal within the meaning of a statute rendering the owner of a dog liable for injury inflicted by it, upon any sheep, swine, cattle, or other domestic animal.

Attorney and client — collection — limitation of action. An attorney who makes a collection for another, there being no special agreement as to service, should, it is held in Ott v. Hood, 152 Wis. 97, 139 N. W. 762, 44 L.R.A.(N.S.) 524, remit the proceeds to his client, less his reasonable charges, within a reasonable time, or notify the latter of readiness to pay. Failure to do so perfects a cause of action in favor of the client to recover the money due him, which starts the six-year statute of limitations running; no demand and refusal, as a condition precedent to the right to proceed, is necessary.

Although it seems to be generally conceded that, for a client to hold an attorney liable for money collected for him, he must make proper demand, it has been held in only a few cases that, in consequence thereof, the statute of limitations does not begin to run against the client for money collected for him by an attorney until that time.

The prior decisions on the subject may be found in a note in 17 L.R.A.(N.S.) 667.

Bail — cash — recovery after forfeiture. In the absence of a statute permitting it, it has been repeatedly decided that the authorities have no power to receive or order a deposit of money by a prisoner in lieu of bail.

So, it is held in the Tennessee case of Brasfield v. Milan, 155 S. W. 926, annotated in 44 L.R.A.(N.S.) 1150, that money deposited in lieu of bail for one accused of violation of a municipal ordinance may, where there is no statutory authority to accept cash bail, be recovered, although it has been declared forfeited for nonappearance of accused.

Bastard — right to recover value of services. The mother of an illegitimate child, who has assumed the custody, control, and maintenance of it, is held entitled in the Mississippi case of Illinois C. R. Co. v. Sanders, 61 So. 309, annotated in 44 L.R.A.(N.S.) 1137, to recover the value of its services from one who employs it without her knowledge or consent.

Carrier — duty to furnish cars — transportation of coal. A railroad is held in Illinois C. R. Co. v. River & R. Coal & Coke Co. 150 Ky. 489, 150 S. W. 641, not to comply with its duty to provide itself with cars sufficient to transport the

coal mined along its lines, by providing sufficient cars to transport all the coal mined should the transportation be equally distributed throughout the year, if they are totally inadequate to transport the coal tendered during the fall and winter months, when the bulk of the traffic in that commodity occurs.

The cases dealing with the duty of a carrier to furnish cars independently of contract, are collated in the note accompanying the foregoing decision in 44 L.R.A.(N.S.) 643.

Carriers — transportation of animal — atmospheric conditions — assumption of risk. One who ships a fat hog by express on a very hot and humid day is held in the Iowa case of Winn v. American Exp. Co. 140 N. W. 427, 44 L.R.A. (N.S.) 662, to assume the risk of injury to the animal by overheating.

Constitutional law — ordinance — regulation of weight of loaves of bread. The power to regulate the sale and determine the weight of bread in the loaf when offered for sale has uniformly been recognized by the courts as a legitimate exercise of the police power of the state, or the municipal corporation acting under its delegated authority.

Prescribing the weight of the loaves of bread to be sold within a city is held in Chicago v. Schmidinger, 243 Ill. 167, 90 N. E. 369, 17 Ann. Cas. 614, annotated in 44 L.R.A.(N.S.) 632, not to deprive the baker of his property without due process of law, in that it interferes with his freedom of contract for the disposition and sale of it. Nor is an ordinance specifying the weights of loaves of bread to be sold within a city invalid special legislation, if it applies to all dealers in that product alike.

Nor is an ordinance specifying the weight of loaves of bread which can be sold within the city void as placing an unreasonable burden on the baker, because the loaves will lose weight through evaporation as soon as they are out of the oven, so that they must be made heavier than the required weight, to comply with the ordinance when sold, nor because the materials of which they are made may fluctuate in value.

And an ordinance requiring loaves of bread sold within the city to be fractions or multiples of 1 pound is not unreasonable, even though it makes no provision for sale of different sized loaves by special contract.

Nor is a requirement that labels be placed on loaves of bread sold within the city, specifying the size of the loaf and name of the maker, unreasonable.

An appeal was taken to the United States Supreme Court from the decision of Chicago v. Schmidinger, and it was there held that the ordinance which fixed the weight of the standard loaf of bread to be sold in the city at 1 pound, and prohibited the making or selling of loaves which are not up to the weight of the standard loaf, or of a specified fractional part or multiple of such loaf, though it may produce some inconvenience, is not such an unreasonable and arbitrary exercise of the police power as to render the ordinance void under the 14th Amendment to the United States Constitution, prohibiting the taking of property without due process of law. 226 U. S. 578, 57 L. ed. 364, 33 Sup. Ct. Rep. 182.

It was further determined that the existence of a considerable demand in a city for loaves of bread of sizes other than those fixed by an ordinance of that city prohibiting the sale of other than the standard sizes does not render the ordinance invalid as interfering with the freedom of contract, protected by the 14th Amendment to the United States Constitution against infringement without due process of law.

Constitutional law — public trial — exclusion of spectators. The authorities are by no means unanimous on the question whether or not the court has a right to exclude the public from the court room during the progress of a criminal trial.

One on trial for rape is held in Reagan v. United States, 202 Fed. 488, annotated with recent cases in 44 L.R.A. (N.S.) 583, not deprived of a public trial by the exclusion from the court room of all spectators, if the court officers, including members of the bar and witnesses, are allowed to remain.

The earlier cases on this subject are collected in notes in 9 L.R.A.(N.S.) 277, and 27 L.R.A.(N.S.) 487.

Contempt — injunction against liquor nuisance — violation by clerk. Apparently the first case involving the effect, as against an employee of the owner, of an injunction against the use of property for certain purposes, in the Iowa case of Harris v. Hutchison, 140 N. W. 830, 44 L.R.A.(N.S.) 1035, which holds that the clerk of a saloon keeper, who is not a party to a suit in which the employer is enjoined from maintaining a liquor nuisance, and who has no actual knowledge of the decree, is not guilty of contempt in making sales of liquor in violation of the injunction.

Criminal law — right to consult counsel. The constitutional right of the accused to counsel is now so much a matter of course in its broadest sense as to account for the comparatively rare appearance of cases on any phase of the subject in the American books. The question of opportunity for consultation out of court seems to have arisen in but two or three cases.

The Oklahoma case of State ex rel. Tucker v. Davis, 130 Pac. 962, annotated in 44 L.R.A.(N.S.) 1083, holds that where a person is confined in jail pending a trial upon a criminal prosecution he has the right to have an opportunity to consult freely with his counsel without having any person present to hear what passes between them, whose presence is objectionable to such defendant.

Criminal law — speedy trial — demand. The authorities support the rule that one accused of crime will not be entitled to a discharge because of delay in prosecution, unless it appears that he has either made a demand for a trial, or resisted a continuance of the case, or at least made some other effort to secure a speedy trial.

So, it is held in the Oklahoma case of Head v. State, 131 Pac. 937, annotated in 44 L.R.A.(N.S.) 871, that a defendant who has never demanded or been refused a trial is not entitled to be discharged upon the ground that he was not brought to trial at the next term of the court at which the indictment or information was presented, unless he shows that the laches was on the part of the state through its prosecuting officers; otherwise the presumption will prevail that the delay was caused by or with the consent of the defendant himself; and when a defendant is on bail, he must demand a trial of his case, or resist a continuance of the case from term to term.

Deed — failure to deliver — effect. In the absence of all evidence to the contrary, it seems clear that the possession of a deed by the grantor at his death raises a presumption that it never was delivered, which is sufficient to overcome any presumption of delivery arising from the mere existence of the executed instrument.

That no title passes by a deed from a man to his wife, which, after its execution, he places in his money box or drawer, to which he carries the key, and in which it is found after his death, with nothing except the execution of the instrument to show an intention to vest title in her, is held in Butts v. Richards, 152 Wis. 318, 140 N. W. 1, annotated in 44 L.R.A.(N.S.) 528.

Disorderly house — criminal liability of lessor. The general rule seems to be that a person, having possession of a house which a lewd woman desires for the purpose of carrying on her practice therein, is under the actual duty of not renting it to her if he knows that purpose; as the law says that he owes that much to society. It is not the civil contractual status of the parties that is the important thing in fixing the culpability, but it is the landowner's conduct in giving over the possession of the house to the lewd woman, with knowledge of the purpose to which it is to be devoted, that makes him a partner in her crime. Where the charge is that one who has leased premises, though without knowledge that they may be used for illegal purposes, yet, after having such knowledge, knowingly permits the same to be used for such purposes, there is a conflict of opinion as to what his duty may be in order to relieve himself from liability, though the majority of the cases

seem to hold that he will be liable if he acquiesce in such use with knowledge.

The case of Blocker v. Com. 153 Ky. 304, 155 S. W. 723, annotated in 44 L.R.A.(N.S.) 859, holds that a lessor who has no notice at the time of the lease that the lessee is of bad character or intends to use the property as a house of prostitution cannot, merely because he receives notice during the tenancy that the house is being used for that purpose, be convicted of the offense of maintaining a disorderly house if he does not aid or abet the lessee in so doing.

Divorce — alimony — amount. It is held in the Colorado case of Van Gorder v. Van Gorder, 129 Pac. 226, that a decree awarding a wife who is no longer able to labor hard, and is forced to seek a separation by the misconduct of her husband, a moiety of the property accumulated by their joint labors through a lifetime, will not be interfered with on appeal where the joint property is sufficient to support them both comfortably if living together, since she is entitled to sufficient property to support her comfortably living alone.

The amount of permanent alimony on absolute divorce is considered in the note appended to the foregoing decision in 44 L.R.A.(N.S.) 998.

Insurance — animal — contagious disease — killing under statute — liability. An insurer is held in Joplin v. National Live Stock Ins. Asso. 61 Or. 544, 122 Pac. 897, not liable for the death of a horse killed under advice of a veterinary because afflicted with glanders, for which the civil authorities would have killed it on notice under the statute, under a policy insuring against loss by death from disease, but withholding liability for loss caused by "order of any civil authority." Nor does consent of the managing agent of an insurance company to the killing of a horse afflicted with glanders impose a liability on the company for the loss, where the policy provides that no agreement of any agent contrary to the provisions of the policy shall be binding on the insurer unless authorized by the home office.

The case law dealing with policies specifically insuring animals is discussed in the note accompanying the foregoing decision in 44 L.R.A.(N.S.) 569.

Indictment — absence of foreman of jury — effect. An indictment otherwise regular is held in the Mississippi case of State v. Coulter, 61 So. 706, 44 L.R.A. (N.S.) 1142, not vitiated by the fact that the foreman of the grand jury was excused on account of interest, from attendance during consideration of the facts upon which it was founded.

This is apparently the first case to pass upon the question of the effect of the absence of a duly appointed foreman from the grand jury room.

Landlord and tenant — infection of property — liability for destruction. The first case involving the liability of one responsible for the infection of premises to reimburse the owner for their destruction rendered necessary in consequence thereof seems to be the Washington case of Farrar v. Peterson, 72 Wash. 482, 130 Pac. 753, 133 Pac. 594, 44 L.R.A.(N.S.) 1092, which holds that the lessee of a barn is not bound to reimburse the lessor for its destruction by public authorities because, without knowledge of the nature of the disease, he places a horse in it which is afflicted with glanders.

Larceny — money in pocket — asportation. Sufficient asportation to constitute larceny is held in Adams v. Com. 153 Ky. 88, 154 S. W. 381, 44 L.R.A. (N.S.) 637, to exist when one puts his hands in another's pocket and lifts money from the bottom to the top of the pocket, although he is intercepted before he removes it entirely from the pocket.

The cases as to what constitutes an asportation which will support a charge of larceny may be found in a note in 29 L.R.A.(N.S.) 38.

Limitation of actions — lost or stolen property — when runs. The statute of limitations, as to lost personal property, or personal property in the hands of a thief, is held in the Oklahoma case of Adams v. Coon, 129 Pac. 851, 44 L.R.A.

(N.S.) 624, to begin to run from the time of the wrongful taking or possession, and not from the time when the owner first had knowledge thereof, provided there was no fraud or attempt at concealment; and if such fraud or concealment exists, it must, in order to avail the owner, be the act of the thief or finder of the property.

The cases treating of the running of the statute of limitations against an action to recover lost or stolen property are gathered in notes in 29 L.R.A.(N.S.) 120, and 34 L.R.A.(N.S.) 621.

Master — provision of eating place. There seems to be no case which passes upon the precise question indicated in the title of this note, other than Allen v. Chehalis Lumber Co. 61 Wash. 159, 112 Pac. 338, 44 L.R.A.(N.S.) 1102, which holds that a master is under no obligation to employees to provide a suitable place for them to eat luncheons which they may bring with them, to avoid leaving their working place for their meals.

There is a class of cases wherein it is sought to hold the master liable for an injury sustained by a servant while on the master's premises during the period allowed for lunch or while eating meals. These cases are included in notes in 12 L.R.A.(N.S.) 853, 23 L.R.A.(N.S.) 954, which discuss the question whether the relationship of master and servant still exists where servant goes on master's premises before, after, or between hours of actual labor.

Master and servant — performance to satisfaction of employer — good faith of discharge. The cases of contracts where the employer is to be satisfied have been divided into two classes: (1) Those where his satisfaction is the determining feature, and (2) those where he is to act fairly and reasonably in making a decision as to his satisfaction.

The contract was considered to be of the first class in the Michigan case of Schmand v. Jandorf, 140 N. W. 996, annotated in 44 L.R.A.(N.S.) 680, which holds that one undertaking to perform services to the satisfaction of another is subject to discharge when the latter is dissatisfied, and the question of the reasonableness of the dissatisfaction cannot be reviewed by the courts.

Monopoly — farmers' organization — restriction of sales. An organization of farmers for the purpose of creating a live-stock market at a certain shipping point, which requires the members to sell their stock to the association under a penalty of 5 cents per hundredweight in case they sell to another, is held in the Iowa case of Reeves v. Decorah Farmers' Co-op. Soc. 140 S. W. 844, annotated in 44 L.R.A.(N.S.) 1104, to be illegal as in restraint of trade.

The combination held unlawful in this case under both the common-law and anti-trust statutes, differed greatly from the ordinary combination to form a monopoly. In the first place the combination was in effect to establish a selling agency for the handling of the produce of the members by shipping same to designated places; it was apparently not the object thereof to increase the price of the commodities to the consumer, but rather to obtain as far as possible the full price paid by the consumer, to the disadvantage or detriment of middlemen. And it is noticeable that it was a middleman who complained of the combination. The theory of the court apparently was that the penalty of 5 cents per 100 pounds upon any live stock sold outside the membership was a restraint upon the freedom of trade and a restraint of competition. If the combination was otherwise lawful, and the court holds the combination in question lawful, if to establish a mere selling agency, it is doubtful if a provision for the assessment of a fine to enforce the by-laws of the organization would render it unlawful.

New trial — divorce — leaving state after decree. A new trial of a divorce cause, it is held in the Nevada case of Whise v. Whise, 131 Pac. 967, annotated in 44 L.R.A.(N.S.) 689, will not be granted on the ground of newly discovered evidence, because plaintiff, who came into the state just long enough before beginning the suit to acquire the necessary residence, leaves the state immediately after the decree is rendered,

since the evidence merely tends to impeach his testimony as to the bona fides of his residence.

The question whether a new trial should be granted, or a decree of divorce set aside, upon the sole ground that after the rendition of the decree the plaintiff immediately left the state and took up his residence in another state, thereby subjecting his testimony as to his bona fide residence in the state to an inference of falsity and perjury, seems to have been passed upon in but one earlier case, Reeves v. Reeves, 24 S. D. 435, 123 N. W. 869, 25 L.R.A.(N.S.) 574, which held that a decree of divorce would not be set aside upon the ground that the plaintiff, within a day or two after procuring a divorce, left the state and thereafter resided in another state.

Perjury — circumstantial evidence — corroboration. In a prosecution for perjury it is held in the Oklahoma case of Metcalf v. State, 8 Okla. Crim. Rep. 605, 129 Pac. 675, annotated in 44 L.R.A. (N.S.) 513, that the falsity of the defendant's evidence may be established by circumstantial evidence, but the facts constituting such circumstantial evidence must be directly and positively sworn to by at least one credible witness, supported by corroborating evidence, and, taken as a whole, must be of such a conclusive character as to exclude every other reasonable hypothesis except that of the defendant's guilt.

The common-law rule concerning proof of perjury was that a conviction could not be had except upon the direct testimony of at least two witnesses. In modern times, however, the rule is that the positive evidence of one witness supported by corroborating circumstances is sufficient. The principle underlying both rules is that where but one witness is produced to prove the perjury, his oath is counterbalanced by the oath of the person accused taken when the testimony in question was given. 30 Cyc. 1452, 1453.

There seems to be considerable conflict as to whether perjury may be proved by circumstantial evidence alone. The main conflict is between the affirmative decisions of Texas and the negative decisions of California, but a careful examination of the cases shows that a large part of the difference of opinion is as to what constitutes circumstantial evidence. But, while the rules finally evolved in those states are directly opposite, convictions of perjury have been sustained in California upon evidence which would be regarded as circumstantial in Texas, and, in the beginning of the rule at least in Texas, the evidence involved upon which convictions were sustained was such as would have been considered direct and positive by the courts of California.

Physician — assistant to licensee. Aside from the Oklahoma case of Gobin v. State, 131 Pac. 546, 44 L.R.A.(N.S.) 1089, no reported instance has been found where an unlicensed physician has attempted to evade a statute prohibiting unlicensed physicians from practising, by allying himself with a licensed physician as an employee.

That case holds a person who does not possess a valid, unrevoked certificate from the state board of medical examiners is not entitled to practise medicine under the laws of Oklahoma, except in emergencies and such other cases as are specifically exempted by the statute. And this is true even though he worked with or under the directions of a duly authorized practitioner; and it is immaterial whether he works for a fee, percentage, or on a salary.

Public improvement — lessee — right to sign petition. The question whether an ordinary lessee for years, without renewal rights, may sign a statutory petition for a public improvement, seems to have been considered for the first time in the Arkansas case of Smith v. Improvement Dist. 156 S. W. 455, annotated in 44 L.R.A.(N.S.) 696, which holds that a lessee for ninety-nine years who has undertaken to pay taxes and assessments upon the property is not an owner within the meaning of a constitutional provision authorizing assessments for local improvements, upon consent of a majority in value of the property holders owning property ad-

joining the locality to be affected, and his consent cannot therefore be considered in determining whether or not the requisite number had been obtained.

Public improvements — right of abutting owner — custom. A custom to permit owners of city property to make the necessary improvements in the street in front of their lots is held in Creekmore v. Justice, 152 Ky. 514, 153 S. W. 738, annotated in 44 L.R.A.(N.S.) 552, to be superseded by a statute requiring them to be made by general contract to be let to one contractor, so that, after the passage of such statute, a property owner may be enjoined from attempting to do the work, or interfering with the one to whom the contract is let.

Railroad — blocking highway crossing — hindering physician — liability to patient. A railroad company which obstructs a highway crossing with a train a longer time than allowed by statute, thereby hindering a physician seeking to reach a woman in childbirth, is held liable in the Mississippi case of Terry v. New Orleans G. N. R. Co. 60 So. 729, annotated in 44 L.R.A.(N.S.) 1069, for the increased suffering and injury to her which result from the delay.

Sale — food — unfitness — original packages — liability. A retailer of mill feed in original packages is held in Walden v. Wheeler, 153 Ky. 181, 154 S. W. 1088, 44 L.R.A.(N.S.) 597, not liable for injury to the cattle of a customer because of glass in the food, if the customer did not rely on his judgment as to the fitness of the food, and he had made no inspection of the material and had no notice of its unfitness.

Specific performance — giving services for property — repudiation. One who having undertaken to care for afflicted children as a member of their father's family, in consideration of a share of his estate at his death, marries, and refuses to continue the services unless her husband is received into the family, which condition is rejected, is held in Bennett v. Burkhalter, 257 Ill. 572, 101 N. E. 189, to forfeit her right to the property, and cannot maintain an action specifically to enforce the contract.

The numerous cases relating to specific performance of a contract to leave property in consideration of services or support are gathered in the note appended to the foregoing decision in 44 L.R.A. (N.S.) 733.

Statute — employers' liability act — retroactive effect. That the Federal employers' liability act of 1908 is not retroactive, and therefore does not give a right of action for injuries which occurred before it took effect, was held in Winfree v. Northern P. R. Co. 97 C. C. A. 392, 173 Fed. 65, annotated in 44 L.R.A.(N.S.) 841. This decision has been affirmed by the United States Supreme Court, 227 U. S. 296, 57 L. ed. 518, 33 Sup. Ct. Rep. 273.

Tax — deed by agent — passing of title. In September a son sold certain lots belonging to his mother, giving a deed duly executed by himself as her attorney in fact. The grantee, insisting on a deed direct from the mother, paid the consideration upon the understanding with the son that the deed executed by him should be held until the grantor could return from abroad, when she would execute one herself. An instrument dated October 29, sent to her, was executed November 3 and thereafter delivered. Aside from the execution and dates, both deeds contained the same covenants, recited the same considerations, and were identical in terms. On this state of facts it was held in Bigger v. Underwood, 88 Kan. 325, 128 Pac. 187, that the lots were conveyed in September, and the grantor is not liable for the taxes which became a lien November 1.

The subject of substitute conveyances is treated in the note accompanying the foregoing decision in 44 L.R.A.(N.S.) 848.

Tax — grain in transit — temporary delivery. Grain owned by a citizen of a state which he has shipped from one sister state to another upon a bill of lading giving him the privilege of unloading at the place of his residence for inspec-

tion, weighing, cleaning, drying, sacking, grading, and mixing, is held in People v. Bacon, 243 Ill. 313, 90 N. E. 686, annotated in 44 L.R.A.(N.S.) 586, not in transit, while in his private elevator for such purpose, so as to be exempt from state taxation as interstate commerce, if the period of its detention is indefinite, and he is under no obligation to forward it at any particular time, although he intends ultimately to send it forward under the bill of lading to its destination for sale.

People v. Bacon was affirmed by the Supreme Court of the United States in 227 U. S. 504, 57 L. ed. 615, 33 Sup. Ct. Rep. 299, where the court said: "But neither the fact that the grain had come from outside the state, nor the intention of the owner to send it to another state, and there to dispose of it, can be deemed controlling when the taxing power of the state of Illinois is concerned. The property was held by the plaintiff in error in Chicago for his own purposes and with full power of disposition. It was not being actually transported, and it was not held by carriers for transportation. The plaintiff in error had withdrawn it from the carriers. The purpose of the withdrawal did not alter the fact that it had ceased to be transported and had been placed in his hands. He had the privilege of continuing the transportation under the shipping contracts, but of this he might well avail himself or not, as he chose. He might sell the grain in Illinois or forward it, as he saw fit. It was in his possession, with the control of absolute ownership. He intended to forward the grain after it had been inspected, graded, etc., but this intention, while the grain remained in his keeping, and before it had been actually committed to the carriers for transportation, did not make it immune from local taxation. He had established a local facility in Chicago for his own benefit, and while, through its employment, the grain was there at rest, there was no reason why it should not be included with his other property within the state in an assessment for taxation which was made in the usual way, without discrimination."

Tax — sale — confirmation — notice to occupant. An actual occupant of real estate, either claiming an interest therein in privity with the owner, or claiming title or a right of possession adversely to the owner, is held in Parsons v. Prudential Real Estate Co. 86 Neb. 271, 125 N. W. 521, to have such an interest in the property as that notice to him is essential before a valid confirmation of such sale can be had; but a mere trespasser, claiming no title or interest in the property, and having no duty to pay the taxes, is not an actual occupant upon whom personal service of notice must be had in order to vest the court with jurisdiction to confirm the sale.

The numerous adjudications as to who is entitled to notice to redeem from a tax sale are collected in the note appended to the foregoing decision in 44 L.R.A. (N.S.) 666.

Unfair trade — toy — container device — right of monopoly. There can be no question of unfair competition from any limitation or simulation by a competitor where the simulation relates to the article itself, and the article does not identify or distinguish the complainant's product and he has no exclusive right in the production of the article imitated.

So, it is held in Rice v. Redlich, 202 Fed. 155, annotated in 44 L.R.A.(N.S.) 1057, that one does not, by placing on the market a toy container for candy and perfume, copied after an unpatented article in general use, such as a desk telephone, acquire an exclusive right to its use, so as to prevent another, under the doctrine of unfair trade, from making and selling a similar device, so marked as not to deceive the public as to its origin.

In applying this rule, the court very sharply draws the distinction between lawful and unlawful imitation within the rule of unfair competition. Thus, it is conceded that had the toy telephone been adopted as a container for the goods of the complainant, and for the purpose of selling his goods and of indicating that they were his product, then he would have been entitled to enjoin a similar use of a container of the same shape and style by a competitor. This doc-

trine, however, is merely the application of the rule that equity will enjoin a competitor from so dressing his goods as to make it possible to deceive the public with reference to their origin.

It is, however, pointed out that the use of a toy container in the form of a desk telephone, not being for the purpose of selling the small quantity of candy contained therein, but primarily to sell the toy itself, and since in the production and sale thereof the complainant had no exclusive right, the doctrine of unfair competition does not apply, for this doctrine does not extend to cases where the similarity complained of is necessary in the construction of the article, its imitation being a functional feature of the article, and not a nonessential feature of form, color, or external detail.

Will — incapacity of legatee — right of heir to question. The cases are in conflict as to the right of any person or corporation, other than the state, to question the power of a religious or charitable corporation to take by will property in excess of its charter authority. This conflict, however, to a great extent arises from the different policies of the various states with reference to the validity in general of devises to such corporations. In some states, testamentary gifts to charitable corporations are favored, while in others the right to make such gifts as well as the power of the corporation to receive same is restricted by statute.

Where the policy of the state is not favorable to such disposition by a testator of his property, the heir, legatee, or other person interested in the devolution of the subject-matter of a devise or bequest to a corporation should the devise or bequest be held invalid, may raise the question as to power of the corporation to take the property.

This doctrine is sustained in Kennett v. Kidd, 87 Kan. 652, 125 Pac. 36, annotated in 44 L.R.A.(N.S.) 544, which holds that where a testator has attempted to devise and bequeath to a camp of Modern Woodmen real and personal property, his heirs may affirmatively or defensively assert the invalidity of such provision and the inability of the camp to take thereunder.

The earlier cases on this subject are gathered in notes in 32 L.R.A. 293, and 9 L.R.A.(N.S.) 689.

Will — residuary clause — lapsed devises. A comparison of the rules as to the devolution at common law of bequests of personal property and devises of real estate which prove ineffectual indicates a marked difference between them. The former favors the residuary legatee, and the latter the heir at law.

In many jurisdictions, the distinction between the devolution of ineffectual legacies and devises has been abrogated by legislation. In England and in some of the states the rule has been expressly abrogated, and also in many other states, to the extent at least of providing that, as to both real and personal property, a will shall operate as of the date of the testator's death, where a contrary intention does not appear.

By the weight of authority, statutes of the latter character are held to remove the common-law distinction between ineffectual legacies and devises, thereby placing both lapsed legacies and devises within the operation of the rule formerly limited to legacies, the result being that ineffectual devises of real estate now fall into the residuum, the same as lapsed legacies, and both pass by the residuary clause to the general residuary legatee or devisee, and not to the next of kin or heirs at law of the testator.

The Arkansas case of Galloway v. Darby, 151 S. W. 1014, holds that a residuary clause carries lapsed devises, where the will speaks from the death as to real estate, although it purports to carry property not specifically devised; at least where the will, as a whole, discloses an intention to dispose of the whole estate.

This decision is accompanied in 44 L.R.A.(N.S.) 789, by an extensive note on the devolution of a lapsed legacy or devise where the will contains a residuary clause.

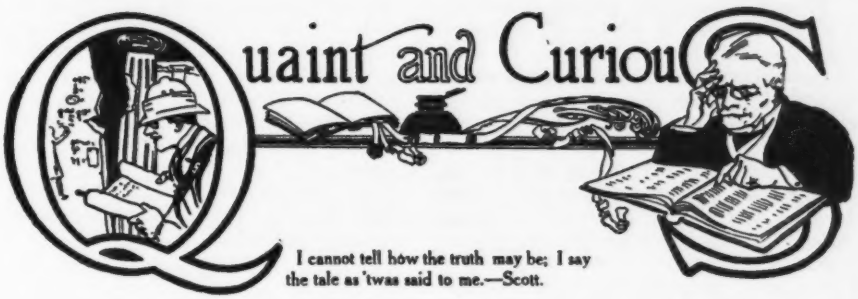
Recent English and Canadian Decisions

[Note.—The more important of these decisions will be reported, with full annotation, in British Ruling Cases.]

Chattel mortgage on stock in trade — inclusion of account register. That the terms of a chattel mortgage, purporting to cover after-acquired property, which described the property mortgaged as "all and singular the stock of hardware, crockery ware, groceries, including canned goods, fruits, and general groceries, together with all and singular the contents, including shop and office fixtures, scales, appurtenances . . . and it is the intention hereof and of the parties hereto that these presents shall not only cover and include all and singular the present stock of goods and all other the contents of said shop, . . . but any other goods that may be put in said shop in substitution for, or in addition to, those already there," do not cover an account register subsequently purchased, is held in Dominion Register Co. v. Hall, 47 N. S. 57.

Courts — power to hear cases in camera. The principle of Anglo-Saxon jurisprudence that justice shall be administered publicly, and the character and extent of the exceptions thereto, are extensively discussed by the House of Lords in the case of Scott v. Scott [1913] A. C. 417, 29 Times L. R. 520. The question there before the court was whether the plaintiff in a suit to annul her marriage, which had been ordered to be heard in camera, was guilty of a contempt in sending copies of the proceedings to her husband's relatives in defense of her reputation. It was held that the circumstances of the case were not such as to warrant the making of the order; and that the order, assuming that there was jurisdiction to make it, did not prevent a subsequent publication of the proceedings. The Lord Chancellor said that while the broad principle is that the courts of England must, as between parties, administer justice in public, this principle is subject to apparent exceptions, which are themselves the outcome of a yet more fundamental principle, that the chief object of courts of justice must be to secure that justice is done, as in the case of litigation as to a secret process, where the effect of publicity would be to destroy the subject-matter; that the question is by no means one which can be dealt with by the judge as resting in his mere discretion as to what is expedient, but he must treat it as one of principle, and as turning, not on convenience, but on necessity. Referring to matrimonial cases, he said that if the evidence to be given is of such a character that it would be impracticable to force an unwilling witness to give it in public, the case may come within the exception to the principle that in these proceedings a public hearing must be insisted on in accordance with the rules which govern the general proceeding in English courts of justice; but that a mere desire to consider feelings of delicacy or exclude from publicity details which it would be desirable not to publish is not enough to justify an order for hearing in camera. Lord Halsbury said that, while he agreed generally in the principles laid down by the Lord Chancellor, he wished to guard himself against the proposition that a judge may bring a case within the category of enforced secrecy because he thinks that justice cannot be done unless it is heard in secret, and that the language employed by the Lord Chancellor was not so definite in its application as to preclude an individual judge from applying it in a way which the law does not warrant. Lord Loreburn said that to the inveterate rule that justice shall be administered in open court there are exceptions, as where the subject-matter of the action will be destroyed by a hearing in open court, as in a case of some secret process of manufacture, or as where the exclusion of the public is necessary to prevent tumult or disorder, or as where witnesses may be ordered to withdraw lest they trim their evidence by hearing the evidence of others, or where a judge finds that a portion of the trial is rendered impracticable by the presence of the public.

The members of the court concur in holding that the courts have no right to close their doors in the interest of public decency except by legislative sanction.



I cannot tell how the truth may be; I say the tale as 'twas said to me.—Scott.

In a Kentucky Dry Town. The proprietor of a soft drink emporium, who filed a petition in bankruptcy at Richmond, a "dry" town, listed several breweries as his principal creditors.—The Cynthiana Democrat.

Mouse in Beer. Charging that she was thrown into convulsions by drinking beer from a bottle containing the carcass of a mouse, which was sold to Mary Weaver, an aunt of the plaintiff, Lorene Frye filed suit in circuit court against Joseph Moser for $2,050 damages. It is alleged that the bottle of beer was sold for the consumption of Mary Weaver and her guests, including the plaintiff, and that the bottle was so colored the body of the dead mouse could not be seen. Not knowing of the decomposed substance, the plaintiff drank of the contents and was made ill, it is charged.

Psychology for Courts. A practical application of psychology to the routine business of a police court is designed in the appointment, recently announced, of Dr. Victor Anderson, a physician, who is an assistant in philosophy at Harvard University, as a probation officer in the Boston municipal criminal court. The appointment was made by the judges of the court, who plan to accept the report of Dr. Anderson in individual cases to determine whether medical, psychological, or penal treatment is needed for those who come into court on criminal charges.

Curly-Headed Jurors. "Challenged!" "Challenged here, too."

Then, as the curly-headed juryman departed with an angry flush, the tipstaff whispered:

"Challenged, you see, by prosecution and defense alike. I tell you what it is, nobody ever wants a curly-headed man on a jury.

"Lawyers tell me that they don't like curly-headed jurors because such fellows are always conceited and stubborn, and are likely to cause jurors to disagree.

"Why are curly-headed men conceited and stubborn? Well, the lawyers say they're spoiled in childhood. Curly hair being regarded as a sign of beauty, they are petted and favored by their mothers outrageously. Then, when they grow up, the girls pet and favor them. The path of a curly head is strewn with roses, —roses scattered, as you might say, by the white hands of the ladies.

"The result is that curly-headed men think they know it all. They are as vain as peacocks and as obstinate as mules. Therefore they can't get on a jury at any price."—Minneapolis Journal.

Remembers His Horses. Dandy, Knight Templar, and Dan, thoroughbred driving horses of Dr. George E. Foster, a wealthy physician of Springfield, Massachusetts, are specifically provided for in the will of Dr. Foster.

The document stipulates that the horses "shall have their shoes removed and shall be released from all further use and service," and that they shall be provided with green pastures and other equine luxuries during their lifetime. The horses are now in their prime.

Pleasant Kansas Jail. When Tom Culinan was chief of police of Junction City, in fact the police force, he had eleven prisoners in the jail and wanted to get rid of them. "When you feed the critters," he said to the jailer, "just accidentally leave the jail door open." But times were hard and picking up a living outside wasn't so easy. Tom hadn't figured on that, but he did when he came back in the evening and found the eleven prisoners still there and two others who had slipped in while the jailer wasn't looking. Living was better and cheaper inside the jail than it was out.—Junction City Union.

Dramatic Court Scenes. Few dramatic scenes have held a law court so spellbound as that enacted in the recent £1,000,000 will case.

In this instance it was the sudden production and reading of a private letter that thrilled and amazed all who were there.

Sir Charles Mathews, the director of public prosecutions, has seen some terribly dramatic moments in the courts. Curiously enough, the most dramatic of all was in a will case, when Sir Charles appeared as prosecuting counsel against a solicitor charged with having forged the will of a dead lady.

For the defense a woman swore that she had seen the lady, who was ill in bed at the time, sign the will. She added that the prisoner handed the deceased lady the ink and pen with which to sign.

"Did he touch her hand?" demanded Sir Charles.

"I think he did just touch her hand," the witness replied.

"When he did touch her hand," proceeded Sir Charles, and in an instant his voice rose and became harsh and terrible, "was she dead?"

Turning deadly pale, the witness seemed to struggle for breath, swayed in the box, and fainted. The solicitor had taken the hand of the dead woman and with it had written her name to the forged will!

Few people who were present will forget the dramatic outburst of Seddon when on his trial for the murder of Miss Barrow.

In vehement tones and with hand uplifted, the murderer declared, "I swear before God that these are the words that were used."

Great as was the effect of this dramatic utterance on the jury, it was all destroyed by the quiet reply of Sir Rufus Isaacs.

"Mr. Seddon," he said, "all the statements you have been making are statements before God!"

Hanged by the Court Clock. Nearly every murder trial has its tense moments, when every eye is on the witness in the box. A man named Hardy was on trial, and a witness swore most persistently that the prisoner had been in his company at the time the murder was committed.

"Are you quite certain of the exact time?" asked the prosecuting counsel.

"Certain!" replied the witness.

"How are you so sure about it?"

"We were in the Bear public house, and I saw the time by the clock in the bar," said the witness; "it was 28 minutes past 9."

"You saw that clock yourself?" asked the counsel.

"Yes."

Suddenly counsel turned around, and, pointing dramatically to the clock in the court said: "You see that clock? What is the exact time by it?"

The witness became gastly pale, gasped, and was silent.

He looked helplessly at the counsel and then at the clock.

He had been lying, for he could not tell the time!

The prisoner was condemned.

The Hat that Fitted. The chief clue that hanged Williams, the hooded murderer, was a hat of the unusual size of seven and a quarter. When the murderer of Inspector Walls was in the witness box giving evidence on his own behalf, Sir F. Low, K.C., who was prosecuting, suddenly said:

"What size hat do you take?"

"Seven and a quarter," replied Williams.

"And this hat is seven and a quarter," said the counsel, holding up the hat found near the scene of the crime.

"So I believe."

"And it is stated to have come from a shop in Bournemouth."

"Yes."

"Were you in Bournemouth at the time?"

"Yes."

"It would be a remarkable coincidence," finally said Sir F. Low, "that you should have been at Bournemouth at the time the hat was bought, that the hat should turn up in Southcliffe avenue, Eastbourne, and that you, hatless, should not be far from the spot of the murder?"

The coincidence was too strong for the jury, who had breathlessly followed this dramatic piece of evidence, and they brought in a verdict of guilty.—Pearson's Weekly, London.

Misplaced Confidence. There's one young attorney whose faith in human gratitude is less firm than it was when he voluntarily undertook to defend a wayward negro youth on trial before Juvenile Justice Wilson. The charge was burglary. The prosecuting testimony was preponderant, but so vigorously was the defendant's comparatively weak cause exposed that the suspect was acquitted.

With tears of admiration and gratitude rolling down his cheeks, the little negro thanked his champion. "Yo' sholy am a marvelous man," he gushed as the twain departed the court room. "Ah ain't got no dough, but Ah'll take up a killection en gib yo' a handsome fee. "I want yo alus ter remembah me."

"If you can raise any money," the lawyer advised, "you better keep it. I defended you only in the cause of justice and because I knew you were innocent."

They arrived at the offices of the attorney, who temporarily adjourned to a rear room and left his companion the sole occupant of the front one. When he returned the small Afro-American was gone and so was a Webster's Unabridged Dictionary and its wire stand. Neither the boy nor his plunder has been found.

"I'll remember him," the victim said, "every time I want to ascertain correct orthography or exact definition."—New Orleans States.

Used Molasses in a Holdup. Two men wearing good clothes, states Tit-Bits, stopped one night lately before the shop of a foreign grocer and burst into loud laughter.

"I tell you that I will do it," declared one.

"I'll bet you a dollar you do not," said the other.

"Done! I'll take your bet."

Both men entered the shop.

"Do you sell molasses?" said the first.

"Yes, gentlemen," said the grocer.

"Put me two pounds of it in my hat," said the first. "It's for a wager."

The astonished grocer placed the hat in the scale and poured in the required purchase. The price was handed over. The grocer began to count the change when the purchaser said:

"Pardon me, but your molasses has a queer smell."

"It is very good, I assure you."

"No. Smell it."

The grocer put down his head, one of the men thrust the man's head into the hat, the other man grabbed what he could from the till and both got clear off before the alarm could be given.

Two of a Kind. Doctor Fordyce sometimes drank a good deal at dinner. He was summoned one evening to see a lady patient, when he was more than half-seas over, and conscious that he was so. Feeling her pulse, and finding himself unable to counts its beats, he muttered:—"Drunk, certainly!" Next morning, recollecting the circumstance, he was greatly vexed; and just as he was thinking what explanation of his behavior he should offer to the lady, a letter from her was put into his hand. "She too well knew," said the letter, "that he had discovered the unfortunate condition in which she was when he last visited her; and she entreated him to keep the matter secret, in consideration of the inclosed (a hundred pound bank note.)"

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New Books and Recent Articles

"Memories." By Hon. Stephen Coleridge. (John Lane Company, New York) $2.50 net. Postage 20 cents.

It has been the lifelong habit of the writer to preserve and bind letters of interest written to him; and during the years that he lived in the house of his father, Lord Coleridge, the Chief Justice, when it was the meeting place of many of the great men of the time, he began to record in a diary their conversations and opinions.

"I have endeavoured in this book," states the author, "to record some aspects of the world as I have seen it, and of those illustrious men who adorned it when I was younger, and whose names have now become part of the history of the nineteenth century."

In this book the public are invited to enjoy the perusal of much vitally interesting correspondence. Cardinals Manning and Newman, G. F. Watts, James Russell Lowell, Matthew Arnold, Sir Henry Irving, Goldwin Smith, Lewis Morris, Whistler, Oscar Wilde, Ruskin, and many others are sympathetically dealt with.

During the visit of Lord Coleridge, the Chief Justice, to America as the guest of the American bar in 1883, he wrote to his son, the author, a series of letters which have been carefully preserved, recounting his impressions of the United States and of the leading citizens whom he met. The extracts from these are of peculiar interest to American lawyers.

Among the illustrations are many masterly portraits never before published. It is altogether a charming volume.

"The Thirteenth Juror." By Frederick Trevor Hill. (The Century Company, New York.) $1.20 net.

The law's delay is not a new theme but its triteness vanishes when viewed through the medium of Mr. Hill's soul-stirring novel. The plot deals with a legal battle between a farm machinery trust and a small independent competitor which the trust is striving to ruin. The scene is laid in the courthouse of a rural county and in the lobby of the local hotel where lawyers, witnesses, litigants, and jurors fraternize in continuous session until the reopening of the official tribunal.

The book describes in a vivid way the perfectly legal methods by which it is often possible for a powerful and wealthy corporation to harass and overthrow a weaker rival.

The acute trust lawyer, with irreproachable attire and suave manners, and his sturdy, resolute opponent of the local bar are well portrayed. There are numerous amusing and interesting characters, not the least of whom is the shrewd old landlord, Peter Reeve.

The reader, as a privileged character, is permitted to peer behind the scenes where money, politics, and juggled law are invoked to aid in a man's undoing.

The book compares favorably with Mr. Hill's previous excellent work.

"Romantic Trials of Three Centuries." By Hugh Childers. (John Lane Company, New York.) $3.00 net. Postage 20 cents.

This volume deals with some famous English trials, occurring between the years 1650 and 1850. They are described in a remarkably graphic and entertaining style, and contemporaneous persons and events are worked with much skill into the narrative.

"Some of these cases are of more especial importance to lawyers as establishing a principle," states the author—as for instance, "the cases of William Penn tried for an unlawful assembly, of Elizabeth, Duchess of Kingston, prosecuted for bigamy and of Jean Peltier, a French emigré convicted of libeling First Consul Bonaparte; while even in the present year reference was gravely made in an Irish Matrimonial Court to the trial of Beau Feilding as a precedent in the law of espousals. The case of the 'Wager of Battel' (which arose in 1817) resuscitated a custom dating back to the times of chivalry, but this was not allowed to survive, for the courts having solemnly vindicated and established the 'ancient law' Parliament promptly proceeded to demolish it." The holding in the case was that after an acquittal for murder the relatives of the

deceased might challenge the acquitted defendant to single combat.

The book is permeated with the element of human interest and will appeal both to the lawyer and the general reader.

"Flotsam and Jetsam." By Albert W. Gaines. (The Riverdale Press, Brookline, Boston.) $1.20 net.

This volume of light legal verse is clever, entertaining and witty. Some of the pieces are in darky dialect, others are merry restatements of cases from the reports, and others seem to refer to amusing incidents in the writer's professional experience.

The author is a lawyer of high standing at the Tennessee bar, who has practised in Chattanooga for twenty-five years.

This neat and attractive little volume would prove an ideal companion for a leisure hour.

"The History of English Patriotism." By Esmé Wingfield-Stratford, Fellow of King's College, Cambridge. (John Lane Company, New York.) 2 Volumes, $7.50 net. Postage 40 cents.

The author endeavors to show how everything of value that nations in general and the English nation in particular, have at any time achieved, has been the direct outcome of the common feeling upon which patriotism is built. Successive waves of intense emotion sweep over the land as at the time of the Armada and when the Grand Army of Napoleon lay encamped upon Boulogne cliffs. It is such times, and only such times, that can give scope to the genius of a Shakespeare in letters or a Turner on canvas. Mr. Wingfield-Stratford has thus endeavored to go behind the outward and visible manifestations of national personality to the invisible and spiritual forces of which they are the result, to see the manifold development of England as one connected whole, with no more breach of continuity than a living body or a perfect work of art.

The writer has cast his net over every development of national activity. He has woven together the threads of religion, politics, war, philosophy, literature, painting, architecture, law and commerce, into a narrative of unbroken and absorbing interest, which makes the book read more like a romance than a history. And yet the accuracy of his immense array of facts is undeniable.

What a wondrous pageant it is, reaching from the beginnings of national consciousness, through the romance of the ebbing Middle Ages and the splendors of the Tudor dynasty, past the severity of the Puritanic ideal and the license of the Restoration to the modern times of middle class ascendancy at which the prophetic writers of the Victorian age revolted. The story is vividly brought down to these last days of stress, struggle, and social transformation.

The author finally says; "not in gold and not in armaments lies Britain's salvation, but in the love of her children. The key of history is forged of no baser metal, and the sacred influence which binds heart to heart. and unites the living with the dead, is but a portion of that which quickens and glorifies the universe—divine and eternal Love."

"Acts of the Parliament of the Commonwealth of Australia," 1901–1911, (Charles F. Maxwell [G. Partridge & Co.] 458 Little Collins-Street, Melbourne, Victoria) 2 Vols.

These volumes of Acts of the Australian Parliament were compiled and annotated by George S. Knowles, M.A., LL.M. of the Attorney General's Department. The Commonwealth of Australia Constitution Act (63 & 64 Vict. chap. 12) as altered to January 1, 1912, is prefixed to the main body of the work. Extensive tables and indexes afford a ready reference to any particular subject embraced in the wide field of legislation covered by these Acts.

The progressive character of Australian legislation renders many of these statutes of world-wide interest, *e.g.*, the Invalid and Old Age Pension Acts of 1908–1909.

The marginal annotation of the trade and commerce act contains reference to similar provisions in the Sherman act and invites to a study in comparative legislation.

Recent Articles of Interest to Lawyers

Aliens.

"Foreigners' Right of Ownership to Land in Japan."—6 Lawyer & Banker, 284.

American Judicature Society.

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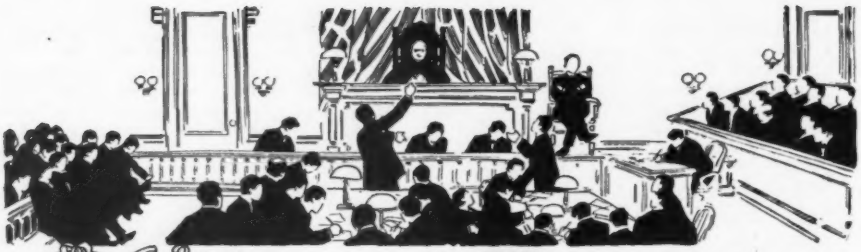


Judges and Lawyers

A Record of Bench and Bar

Sir Rufus Isaacs

England's New Lord Chief Justice

WITH the cordial approval, not only of the members of the legal profession, with whom he is universally popular, but also of the public, who have long learned to appreciate his legal attainments and manly qualities, Sir Rufus Isaacs has been appointed to succeed Lord Alverstone in the lord chief justiceship, the highest purely judicial office in the land. During the past one hundred years the office of lord chief justice has had eight occupants,—Ellenborough, Tenterden, Denman, Campbell, Cockburn, Coleridge, Russell, and Alverstone,—and not one of these distinguished men brought to it a larger store of professional and personal gifts. None of them, at any rate, reached it through a worthier or more romantic career. It is through sheer hard work, combined with forensic gifts of the highest order, and personal qualities of a most attractive kind, that Sir Rufus Isaacs has won his way to the great position to which he has been appointed at the early age of fifty-three. He belongs to a race which has given the world some of its finest legal intellects. Sir George Jessel, whose name stands out pre-eminent in the list of modern masters of the rolls, was the first Jew to become an English judge, and Sir Rufus Isaacs, who has been appointed to "the chair of Mansfield," is the second member of his race to become one of his majesty's judges.

About the early days of the lord chief justice there was little, apart from his determination and independence, to suggest the achievement of his later years. A son of the late Mr. Joseph Isaacs, a member of a well-known London firm of fruit merchants, he was born on October 10, 1860, and was educated at University College School, at Brussels, and at Hanover. A spirit of adventure led him, soon after the completion of his school days, to abandon the comfortable prospect of entering his father's office, and to obtain a berth as "boy" on a Scottish vessel, the Blair Athol, trading to Rio de Janeiro with coal. A year or so later, after he had endured none too willingly the hardships that belong to a life before the mast, he went to Magdeburg as agent for his father's firm, and in this position, which he occupied for about two years, he acquired a knowledge of mercantile life, which was, no doubt, of considerable use to him when he started his career at the bar. His subsequent experiences as a member of the stock exchange, though they did not immediately make for success, were

equally valuable to him when he adopted the profession in which he was destined to rise to so eminent a place. It was in 1887 that, reading with the late Sir John Lawson Walton, he was called to the bar at the Middle Temple. After a certain experience in county court work, he quickly made his way into the foremost rank of the junior bar, and in 1898, only eleven years after he was called, he was appointed Queen's counsel.

In 1900, when Sir Edward Carson's appointment as solicitor general occasioned his withdrawal from the ordinary work of the courts, the new lord chief justice leapt into that commanding position at the bar which he showed he was so well qualified to hold. His parliamentary career began in 1904, when he was returned for Reading, the constituency for which he has continued to sit. His first appointment as a law officer was in the early part of 1910, when, upon the promotion of Sir Samuel Evans to the presidency of the Probate, Divorce, and Admiralty Division, he became solicitor general. Some six months later, upon the appointment of Sir William Robson as a lord of appeal in Ordinary, he succeeded to the attorney generalship, his tenure of which will always be notable because he was the first occupant of the office to be made a cabinet minister.

SIR RUFUS ISAACS

These are the main facts of the new lord chief justice's career. The qualities by which he has gained so high a place in the most competitive calling in the world may be stated less baldly. Sir Rufus Isaacs did not achieve his forensic success by any extraordinary gifts of eloquence. He has not had at his command the polished rhetoric of a Coleridge or the passionate oratory of a Russell. Not that he lacks the gift of impressive speech. Lord Bowen once described Russell as an "elemental force," and there have been occasions calling for some passionate note on which the phrase might not inaptly have been applied to Sir Rufus Isaacs. As a speaker, however, he has, except on very rare occasions, been content to be lucid, rather than eloquent; persuasive, rather than dazzling.

"Though deep, yet clear; though gentle, yet not dull;
Strong without rage; without o'erflowing, full."

His real strength as an advocate has lain in his swift and easy grasp of facts, in his unerring sense of what is essential and tactful, and in his remarkable powers of cross-examination. No advocate of modern times has shown a readier skill in the handling of witnesses. Others may have been more dramatic in their methods, but none has used the art of cross-examination more effectively as a means of eliciting the truth. His style of advocacy, whether in addressing a jury in a sensational case or in arguing an important point of law before a judge, has been marked by a wholesome disregard of the pedantic and technical. He has always fought on the large points, rather than on the small; and has conducted his cases with so fine a sense of fairness that, when he has triumphed, even the "ranks of Tuscany could scarce forbear to cheer."

"The surest way of finding out whether a man is a good fellow," Sir

John Holker once said to Lord James, of Hereford, "is to see whether, after a hard day's fighting at nisi prius, you want to walk back from Westminster to the Temple with him." Sir Rufus Isaacs never had an opponent who did not desire to walk homewards with him. . . . The high regard in which Sir Rufus Isaacs has been held by the bench was fitly expressed by Lord Sumner, of Ibstone, at the recent Hardwicke banquet, when he described him as having uniformly shown at the bar "the ardor of an athlete and the spirit of a sportsman." The possession of the qualities to which these tributes have been paid—the unremitting industry, the large knowledge of legal principles, the ready grasp of facts, the innate sense of fairness, the serenity of temper, and the dignity of demeanor which Sir Rufus Isaacs has always displayed at the bar—makes it certain that he will worthily maintain the highest traditions of the historic office which he now fills.

We are indebted to the London Law Journal for the excellent foregoing sketch of England's new lord chief justice.

Death of Boston Patent Attorney.

William A. Macleod, a Boston attorney, died recently at his home, Pine Hill, Westwood. Mr. Macleod went to Europe in the spring, but, owing to ill health, returned the middle of September and was confined to his home since.

He was born in Providence, Rhode Island, March 19, 1856, being descended from the Macleods of Skye, a family which has been prominently identified with Scottish history for many generations. He graduated from the Massachusetts Agricultural College with the degree of A. B. in 1877, and while there was elected member of the Psi Upsilon Society. He was graduated from Boston University Law School with the degree of L. L. B. in 1879, and was admitted to the bar the same year.

Mr. Macleod was senior partner of Macleod, Calver, Copeland, & Dike, the well-known patent attorneys, with offices in Tremont Building, Boston, and Washington, D. C., and as a patent lawyer won national reputation, especially in connection with textile, shoe, and electrical machinery, and other important trademark cases.

Judge Cross Dead.

Judge Joseph Cross, of the United States District Court for the District of New Jersey, died on October 29, at his home in Elizabeth.

Judge Cross was born at Morristown, in 1843. He graduated from Princeton in 1865. He studied law under William J. Magie, who afterward became Chancellor of New Jersey, and at Columbia University Law School. He was associated with Mr. Magie until the latter was elevated to the Supreme Court bench. In 1888 Judge Cross was made District Court judge for Elizabeth. Two years later he was elected to the Assembly, and being re-elected, and a vacancy occurring in the Speakership, he was made Speaker in the middle of the session. He was again elected, and again chosen Speaker in 1895.

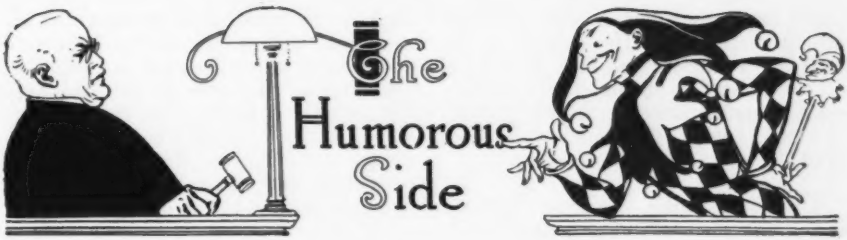
Judge Cross was serving as President of the Senate when President Roosevelt named him for District Court judge, to fill the new office created when the work became too heavy for one.

Death of Law Specialist.

James Mulford Townsend, a corporation law specialist and senior partner in the New York law firm of Townsend & Button, died at his home in Mill Neck, L. I. He was counsel for the Du Pont powder interests in their litigation with the Government, and was formerly a lecturer in the Yale Law School.

Committee on Patent and Copyright Law.

Attorney Hugh K. Wagner of St. Louis is one of the members of the Committee on Patent, Trade-Mark and Copyright Law of the American Bar Association, which has just been named by William Howard Taft, president of the association. The other members of the committee are Frederick P. Fish, Boston; Melville Church, Washington; Robert H. Parkinson, Chicago, and James R. Sheffield of New York.



One touch of Nature makes the whole world kin.—Shakespeare.

Something Else Again. Magistrate—And what was the prisoner doing?

Constable—'E were 'avin' a very 'eated argument with a cab driver, yer worship.

Magistrate—But that doesn't prove he was drunk.

Constable—Ah! But there worn't no cab driver there, yer worship.—London Opinion.

Not Exactly Drunk. A witness being asked whether the defendant in the case was drunk, replied: "Well, I can't say that I have seen him drunk, exactly, but I once saw him sitting in the middle of the floor making grabs in the air, and saying he'd be hanged if he didn't catch the bed the next time it ran around him."

Supply and Demand. Hennessey was being taken home in a wheelbarrow by a faithful friend, one night. This friend was giving Hennessey some good advice, saying: "There's no use your trying, Jerry, you can't drink all the whisky in the world." They were passing a brilliantly lighted distillery at the time, and as Jerry opened his heavy eyes and beheld it, he replied: "Well, begorrah, I have them working nights."

Getting His Bearings. Rev. J. Henning Nelms, rector of the Church of the Ascension, was a Virginia lawyer before he became a minister. One of his favorite anecdotes of the Virginia police court relates to an old-time darkey who was hauled up before the judge for stealing a hen.

Rastus sat throughout the trial without paying a bit of attention to the arguments of the prosecuting attorney, or to his own defense, for that matter, and was "miles away," so to speak. The judge wanted to be easy on the old man, for it was his first offense, and during the course of the argument, while the old man was dreaming away unmindful of what was going on around him, the judge asked:

"Rastus, do you drink?"

Rastus immediately was all attention.

"Jedge," said he, "can I ax you is dat an inquiry or an invitation?"—Cleveland Plain Dealer.

Could be Trusted. The late Lord Young of the Scottish bench was responsible for enlivening many a dull case. One of the best remarks that ever fell from his lips was the reply to a counsel who urged on behalf of a plaintiff of somewhat bibulous appearance:

"My client, my lord, is a most remarkable man, and holds a very responsible position; he is manager of some waterworks."

After a long look the judge answered:

"Yes, he looks like a man who could be trusted with any amount of water."—M. A. P.

Prepared. The late Governor John A. Johnson, of Minnesota, who had many supporters for the Democratic nomination for President in 1908, was asked what his attitude on the matter was. "Why," he said, "I can best explain my attitude by telling you about a man I knew out West who went to town one night and imbibed very freely at the various bars. He was weaving an uncertain way homeward along the road when he almost ran into a large rattle-

snake, that was coiled in the road and rattling ominously. He looked at the snake for a moment and then drew himself up as well as he could. 'If you are going to strike, strike, drat ye,' he said. 'You will never find me better prepared.' "

A Duplicate Order. Senator O'Gorman tells the following story: "A wealthy westerner met a friend of former days, who was rather evidently on the downward path. Plainly liquor had been the cause of his undoing.

"The westerner, however, wished to be friendly, and asked the man to have a drink. The friend gladly accepted the invitation.

"Leading the way into a *café*, the westerner said to the bartender: 'Two straight whiskys, please.'

"The derelict moved quickly to the bar, and said in an eager and decisive tone of voice. 'Give me the same!' "—Hearst's Magazine.

The Inventory. George C. Heyward, lawyer and financier, was talking in Denver about an executor who had been, to say the least of it, remiss.

"The man reminded me," said Mr. Heyward, "of the two clerks who were making an inventory of a bankrupt actress's possessions. The inventory ran like this:

" 'Eight pots grease paint.'

" 'Right.'

" 'Three blonde wigs.'

" 'Right.'

" 'One cigaret tube.'

" 'Right.'

" 'Six bottles of port.'

" 'I don't think it's port. It smells to me like claret.'

"Thus the second inventory clerk spoke, and there followed an hour's intermission. Then the inventory went on again:

" 'Sh—hic—shix empty—hic—claret bo'ls.'

" 'Ri—hic—zhat's right.' "

Conclusive. She looked like a real old southern mammy, and when she appeared before Judge Marsh in the Stapleton police court over on Staten Island, as complainant in a charge of assault and battery against her liege lord and master, her speech did not belie her appearance. A bottle of gin had been the cause of all the trouble, she said, and added that her husband was drunk most of the time. After listening patiently to a long tale of intemperance, Judge Marsh remarked to the defendant:

"If what your wife says is true, I should imagine you to be a rather bibulous person."

"Bibulous!" snorted the old woman. "Bibulous! Ah beg yo' pahdon, suh, but dat niggah doan know no mo' 'bout de Bible dan mah sistah's cat's tail—an' what's mo', ah ain't got no sistah!"—Lippincott's.

No Criticism. A slater who was engaged upon the roof of a house in Glasgow fell from the ladder and lay in an unconscious state upon the pavement. One of the pedestrians in the street who rushed to the aid of the poor man chanced to have a flask of spirits in his pocket, and, to revive him, began to pour a little down his throat.

"Canny, mon, canny," said a man looking on, "or you'll choke him."

The "unconscious" slater opened his eyes and said quietly: "Pour awa,' pour awa'; ye're doin' fine."—Ottawa Journal.

Another Mild Drinker. The testimony brought out at the trial of Colonel Roosevelt's case in Marquette, Michigan, reminds a Kansas story teller of this incident, says the Boston Herald: Once there was a college professor who had been a total abstainer all his life. He became run down in health and had no appetite, and his family physician recommended that he take a little beer before each meal. In a week he reported to the doctor.

"That beer has done me no good, and I have taken it regularly before meals each day."

"Uh huh," said the doctor, "how much did y'u take at a time?"

"Why, doctor," said the professor, "I took a teaspoonful before each meal in a glass of water."

XU